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VERBATIM REPORT

OF THE

PROCEEDINGS

IN THE CASE OF

THE KING

v.

THE JUSTICES OF FARNHAM

IN THE

DIVISIONAL COURT,

ON THE

15th April, and the 1st and 2nd May, 1902.

FREDERICK MOSS,
SOLICITOR,
Clerk to the City Justices,
LIVERPOOL.

LIVERPOOL:
C. TINLING AND CO., PRINTING CONTRACTORS, 53, VICTORIA STREET.

1902.

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IN THE HIGH COURT OF JUSTICE.

KING'S BENCH DIVISION.

DIVISIONAL COURT.

ROYAL COURTS OF JUSTICE,

15th April, 1902.

BEFORE

THE LORD CHIEF JUSTICE,

MR. JUSTICE DARLING AND

MR. JUSTICE CHANNELL.

APPPICATION FOR RULE NISI FOR A MANDAMUS

ON BEHALF OF

JANE EMMA SMITH and Others

TO

THE LICENSING JUSTICES of the Farnham Division in the County of Surrey.

MR. HORACE AVORY, K.C., and MR. C. STIMSON, appeared for the Applicants.

MR. HORACE AVORY: If your Lordships please—On behalf of Jane Emma Smith, I move for a Rule for a Mandamus to the Licensing Justices of the Farnham Division, in the County of Surrey, to hold an Adjourned Meeting of the Licensing Meeting, and hear and determine according to law the application of Jane Emma Smith for a renewal of the License to the Queen Street Tavern, Farnham. The grounds upon which I move are, first, that the Justices themselves were not entitled under the circumstances to be objectors to the renewal of this license;

secondly, that if they were they were not entitled to sit and adjudicate upon their own objections; thirdly, that they were precluded from sitting and adjudicating by reason of their having beforehand collected evidence and prejudged the cases —that is, upon the material which I will give in detail presently; and, fourthly, that one of the Justices who sat was a member of a body that had previously resolved to oppose licenses, and that he had been himself party to a Resolution to oppose the renewal of the Licenses.

The LORD CHIEF JUSTICE: Of all or this particular one?

Mr. HORACE AVORY: This particular one specified.

The LORD CHIEF JUSTICE: In the Resolution?

Mr. HORACE AVORY: No, my Lord, I do not say in the Resolution, but this particular one was in fact opposed by the body of which he was a member.

The LORD CHIEF JUSTICE: Was the Resolution directed to this particular house, or generally?

Mr. HORACE AVORY: The Resolution was a Resolution to support the Magistrates in opposing the renewal of all the Licenses, and specifically was directed at the hearing to the renewal of this particular one.

The LORD CHIEF JUSTICE: At the hearing before the Magistrates?

Mr. HORACE AVORY: Yes, my Lord; so that he was a party to the general Resolution, and a party also to the specific objection to this particular license.

The LORD CHIEF JUSTICE: Was it a full license?

Mr. HORACE AVORY: Yes, a full license, my Lord.

The facts are these:—

The Justices appear by the Affidavit to have appointed a Committee some months before the Licensing day to make enquiries with a view to a reduction in the number of licensed houses in the Farnham Urban District. That Committee proceeded to collect evidence as to all the houses in the

Farnham Urban District, and ultimately the evidence which they collected was drawn up in the form of a Report, and presented to the Justices, and that Report is made an Exhibit to the Affidavit (handed). The Report is a printed Report, and described as "Private and Confidential" on the outside. My Lord, there is a small point which arises upon this. The Report which I am referring to is E.K.[1] It is headed, "Proposed Reduction of Licenses in the Division," and then follows a tabulated statement as to all the houses, giving particulars of the name of the owners, &c., the Licensees, whether the house is free or tied, the extent of sleeping accommodation for travellers, &c., and then in the last column "General remarks," some of which describe the houses and the conveniences at the houses, as your Lordships will see, as being indifferent. The remarks upon some of them are "indifferent" and some of them "fair."

The Lord Chief Justice: Yours is "indifferent."

Mr. Horace Avory: I had not looked at that particular one. This Report is drawn up, as stated at the end, as the result of personal observation of the Committee, or of statements made to them by the Licensees or Managers on the occasion of their official visit, and the Affidavit states that this information was in fact obtained not only from Licensees or Managers, but also from conversation with persons found in the house—lodgers and so on; so that it was a collection of evidence obtained from statements made by persons whom the Justices visited and interviewed. Then the Committee having presented this Report to the Justices, they held a Meeting before the licensing day, at which, having considered this Report, they resolved that their Clerk be instructed to obtain the presence of Witnesses in support of this Report, and the Clerk being instructed as a Solicitor to obtain the presence of Witnesses and the evidence.

The Lord Chief Justice: Police and others?

Mr. Horace Avory: Yes, my Lord; the Annual Meeting was held on the 1st March.

The Lord Chief Justice: When was this Report presented?

Mr. Horace Avory: Some time before that date—in February. Then on the 1st March the Annual Meeting was held, and at the Annual Meeting the Justices in Court gave notice, or rather a notice was given on behalf of the majority of the Justices, that they would object to a renewal of all the licenses of the fully licensed houses in that district. The Affidavit states that two of the Justices, one of them being Mr. Gould, the King's Counsel, stated in Court that he and his brother Magistrate objected to and dissented from the whole of these proceedings on behalf of the Justices. Thereupon the Clerk of the Justices proceeded to serve on behalf of the Justices notice of objection.

The Lord Chief Justice: They were adjourned, of course?

Mr. Horace Avory: Yes.

The Lord Chief Justice: I suppose your Client was told to attend?

Mr. Horace Avory: Yes, my Lord. Then comes the further point in paragraph 11 of the Affidavit with regard to this gentleman who is named Mr. Bentall. "At a Meeting of the Surrey Congregational Union, held on the 5th March"—that is, after the annual meeting and before the adjourned day—this Union met, at which Mr. Bentall, one of the Justices, was present, and they passed a Resolution approving of the action of the Magistrates in giving these notices of objection, and the Chairman at the meeting stated that it was necessary that they who were there present should do all in their power to help them, and that they who were present at that meeting were doing what they could to oppose some of the licenses on special grounds.

The Lord Chief Justice: Where is that stated?

Mr. Horace Avory: It is in paragraph 11. "They" meaning thereby himself and the other local gentlemen were doing what they could to oppose some of the licenses.

The Lord Chief Justice: I suppose this is a tied house. It is according to the Schedule.

Mr. Horace Avory: Yes, this particular one is correctly described. One of the points that arise here is that some of the facts which are stated in this Report are quite inaccurate.

The Lord Chief Justice: You are moving on behalf of Mrs. Smith, or you are moving on behalf of the Brewers.

Mr. Horace Avory: Yes, and I am also moving on behalf of others.

The Lord Chief Justice: You have not mentioned that. You are not only moving on behalf of the Queen Street Tavern?

Mr. Horace Avory: No; I am moving on behalf of eight others, my Lord.

The Lord Chief Justice: What is the name of the gentleman who was a Member of the Court afterwards?

Mr. Horace Avory: Mr. Bentall was the name of the Magistrate.

The Lord Chief Justice: Was he a Magistrate at the Adjourned Meeting?

Mr. Horace Avory: Yes, my Lord. I want to finish the remainder of that paragraph. After passing the Resolution that they would oppose the Resolution* on the second day, another gentleman remarked that the public knew that the Brewers could fight, and that they would show that they could fight also.

Mr. Justice Darling: That was an allusion to you, I take it?

Mr. Horace Avory: It may have been a covered one. I will proceed now to what happened at the Annual Meeting. It is paragraph 11 of the Affidavit. On the 14th March, after

* Query—Renewals.

giving the names of the Justices who were then present, objection was then made on the several grounds which I have specified.

The LORD CHIEF JUSTICE: By your people, you mean?

Mr. HORACE AVORY: Yes.

The LORD CHIEF JUSTICE: I should like to see the Notice which was served of Objection to the Justices. Is that annexed to the Affidavit?

Mr. HORACE AVORY: The Objections served by and on behalf of the Justices?

The LORD CHIEF JUSTICE: Yes.

Mr. HORACE AVORY: I do not think it is annexed. In most cases it was that the house was not necessary—not required.

The LORD CHIEF JUSTICE: That is what I wanted to know. Was it so in the case you are moving—the Queen Street Tavern —on that particular ground?

Mr. HORACE AVORY: In all of them it certainly was on that ground.

The LORD CHIEF JUSTICE: What I wanted to know was whether there was a special ground with regard to Queen Street Tavern or not.

Mr. HORACE AVORY: I am told the objection was that it was a Lodging House, which I should have thought was in its favour—that it was a place that provided accommodation for people to sleep.

The LORD CHIEF JUSTICE: That is all I wanted to know.

Mr. HORACE AVORY: At the Meeting an Objection was made on this ground, that the Justices were not entitled to serve notices of objection that they could not sit, and that all who had been party to the Report of this Committee were disqualified from sitting, and particular objection was made to any Justice, because it was not known at the time whether he was present or not, who was a member of the Congregational Union who had been a party to the Resolution to oppose the

License. Thereupon the majority of the Justices,—that is to say, all those who had been parties to the objection, retired to consider the objection, stating that they did not consider it right that their brother Justices who had been no parties to that should sit in judgment upon them. So that they left out the only ones who were impartial and not biassed, and themselves retired and came back into Court, and resolved to overrule the objection.

Mr. Justice Darling: What did the other Justices say? Did they simply sit doing nothing?

Mr. Horace Avory: They sat doing nothing, I suppose. It was not seemly that they should insist on retiring and discussing it, because the Chairman stated that they thought it was not right that the other Justices should sit in judgment on them.

Mr. Justice Darling: But he did think it right that he should sit in judgment upon themselves.

Mr. Horace Avory: Yes; they then retired and came back and proceeded to hear these applications themselves. It turned out after the second day—some time towards the end of the second day—that Mr. Bentall, the gentleman who has been named, was in fact on the Bench.

The Lord Chief Justice: Did he retire with the others on the first day?

Mr. Horace Avory: Yes, he retired with the others and resolved that he himself was not disqualified. Then in a particular case the fact came out, because the gentleman who was Chairman of the Meeting, went into the Witness Box and gave evidence against the renewal of the License of this particular house.

The Lord Chief Justice: Who?

Mr. Horace Avory: Mr. Grantham, the Chairman of the Meeting.

The LORD CHIEF JUSTICE: Each case was heard, and some evidence was given as to the non-necessity of the premises?

Mr. HORACE AVORY: Yes, and the Chairman of the Bench conducted the case for this opposition, called the Witnesses, examined them, and, when necessary, re-examined them.

The LORD CHIEF JUSTICE: Of course there are other points in this case which I quite see. It was not actually argued before us, but we did express the view in the Kingston case that we were not prepared to say that the fact that the Magistrates had themselves suggested the necessity for the enquiry prevented them from acting.

Mr. HORACE AVORY: And I am sure your Lordship will allow me to say that I carefully guarded myself in that case from admitting that the Justices could themselves give any notice of objection.

The LORD CHIEF JUSTICE: Yes, I said so. I said it was not argued. We only guarded ourselves against expressing an opinion that they could not do it.

Mr. HORACE AVORY: It was not argued because I stated that in my view the Justices could not themselves give notice of objection. This is a point that has never been authoritatively settled, but I have the considered Judgment of Lord Brampton, then Mr. Justice Hawkins, in which he expresses a confident opinion that they cannot support the objection.

The LORD CHIEF JUSTICE: Yes. There are other points in this case quite independent of that.

Mr. HORACE AVORY: Yes; but perhaps I may just read this passage which is in the case of The Queen *v.* The Justices of Anglesea, reported in 65 Law Journal, Magistrates' Cases, page 12. I will read from page 14, where the learned Judge considers the previous cases on the point. After referring to the case of The Queen *v.* Farquhar and the case of The Queen *v.* The Justices of Merthyr Tydfil, which are the two cases always relied upon as the authorities, and after pointing out

that Mr. Justice Blackburn in that case had merely said: "I do not say it is not impossible that they might themselves give notice of objection, and that is the basis really of the view that they may do it." Mr. Justice Hawkins, as he then was, at page 15, says this: "The proviso admits of objections being made at any time during the Meeting, subject to the provision made for giving the Applicant for the License an opportunity of being heard when the Justices come to consider the matter. It could not have been in the contemplation of the Legislature that Justices would or might be objectors under that sub-section, for the Justices are the only persons to whom an objection can be made; they are the only persons required to take action upon it, and they are the only persons who are to hear and determine it. In so doing they act judicially."

The Lord Chief Justice: I am not putting it against you, but what is to happen if there are too many houses, and for some reason or other the Police will not move. Then a private individual must take it up, I suppose?

Mr. Horace Avory: Yes.

The Lord Chief Justice: There must be somebody.

Mr. Justice Channell: I suppose you say one of the Justices might do it if he wished to do it, provided he retired from the Bench when the application was heard?

Mr. Horace Avory: Certainly; that is why I say the two points are involved.

The Lord Chief Justice: Would you hand up the notice I asked for? I should like to see it.

Mr. Horace Avory: It does not appear to be here, my Lord, but I have sent for one. I believe one is available.

The Lord Chief Justice: The one which raised the objection in this case is the one I want; it ought to be here. Can you let me have one of the others?

Mr. Horace Avory: I will send for it. Then the learned Judge goes on: "It is difficult to suppose that those by whom

this enactment was passed intended to depart so far from one of the first principles of justice, that no man shall adjudicate upon his own case. Yet it would be so if Justices were allowed to adjudicate upon their own objections, made to themselves."

The Lord Chief Justice: In that case they had sat as well as raised the objection.

Mr. Horace Avory: Yes. "The language of the proviso, 'on an objection being made,' can only mean made to the Justice." I submit that is sufficient authority on the two first points.

The Lord Chief Justice: Has not there been some case in the House of Lords on the question as to whether it is a Court or not?

Mr. Horace Avory: All they have held is, that it is not a Court of Summary Jurisdiction. That is the case of Boulter *v.* The Kent Justices.

Mr. Justice Channell: Have there been any cases in which the matter has been discussed since then, as to Justices sitting and making the objections themselves.

Mr. Horace Avory: I think not. For that reason I am going to rely upon the decision in the case of Ackersdyke *v.* The London County Council, which I submit directly meets the point which is in the mind of Mr. Justice Channell.

The Lord Chief Justice: Where is it reported?

Mr. Horace Avory: In 1892, I. Queen's Bench, page 190.

The Lord Chief Justice: That cannot have been after Boulter's case.

Mr. Horace Avory: No; but it determined the principle.

Mr. Justice Channell: Exactly.

Mr. Horace Avory: There it was a case of the London County Council sitting to hear applications for Music Licenses, where it was admitted that they had no power, and were not sitting as a Court of Summary Jurisdiction, seeing that the London County Council had no power to administer an Oath.

There this Court held they were nevertheless subjected and governed by the same principles as a Justice sitting in a Court of Summary Jurisdiction; and in that case it was held that just as some members of the London County Council had been members of a Committee.

The LORD CHIEF JUSTICE: Is there an appeal to Quarter Sessions in this case?

Mr. HORACE AVORY: Yes, but as your Lordship knows, that only applies as an answer to a Mandamus where the Appeal is an equally effectual remedy; but in such a case as this it is not an equally effectual remedy, because in fact the Chairman of the Justices here is a member of the County Licensing Committee, and it may be, from what had taken place, the same objection might be taken as is taken here to some of the Justices sitting. In the case of Ackersdyke *v.* The London County Council, it was held that members of the London County Council who had been members of the Committee and who had enquired into the question of the renewal of that particular License, and who themselves subsequently supported the opposition to the renewal, and instructed Counsel to support it.

The LORD CHIEF JUSTICE: You may take a Rule, Mr. Avory. Are there any other independent points beyond those which you have indicated to us?

Mr. HORACE AVORY: I think not; I have specified the four.

The LORD CHIEF JUSTICE: You have specified them fully. I only wanted to know whether there were any other special points you wanted to mention.

Mr. HORACE AVORY: No, my Lord.

The LORD CHIEF JUSTICE: Then you may take a Rule.

Mr. HORACE AVORY: Then I ask for a similar Rule in eight other cases where Licenses were refused for similar reasons.

The LORD CHIEF JUSTICE: Is it necessary?

Mr. Horace Avory: Yes. I think so, because the Rule is to hear and determine the particular application, and I must have one in each case. Shall I name them, or hand in the papers?

The Lord Chief Justice: You may hand in the papers. I should think one might be set down—the best one. Is there one which raises any other particular point?

Mr. Horace Avory: I think the Justices will concede on the argument that the others must follow the result of this one.

The Lord Chief Justice: I only mean on the question of expense. You consider this one raises the point?

Mr. Horace Avory: This is the one I should select. Might I ask if the Court would expedite the hearing of this, because the Licenses are dead for the moment?

The Lord Chief Justice: We shall be taking Crown paper next week, and I think there will be no great delay.

Mr. Horace Avory: If your Lordship pleases.

IN THE HIGH COURT OF JUSTICE.
KING'S BENCH DIVISION.
DIVISIONAL COURT.

ROYAL COURTS OF JUSTICE,
Thursday, 1*st May*, 1902.

BEFORE

THE LORD CHIEF JUSTICE,
MR. JUSTICE DARLING, AND
MR. JUSTICE CHANNELL.

THE KING *v.* THE LICENSING JUSTICES OF FARNHAM.

Ex parte A. SMITH and Others.

Mr. HORACE AVORY, K.C., and Mr. STIMSON, appeared for the Appellants.

Mr. FRED. LOW, K.C., and Mr. HOHLER, appeared for the Respondent Justices.

Mr. CYRIL DODD, K.C., appeared for Charles Gould, Esq.

The LORD CHIEF JUSTICE: All these Farnham cases are the same, are they?

Mr. LOW: There is a distinction between three of the cases, which I may have to point out in the course of it.

The LORD CHIEF JUSTICE: They can be all taken together?

Mr. LOW: They can all be taken together.

May it please you, my Lords, I appear with my friend, Mr. Hohler, on behalf of the Justices of the Farnham District of Surrey, to show cause against a rule which was obtained on the 15th April, commanding them to hold an Adjourned Licensing

Session, and deal with certain applications made by the various applicants—the nine applicants for licenses. I should tell your Lordships that I appear on behalf of, I think, ten of the Justices who have made affidavits; but one of the Justices, my learned friend, Mr. Gould, is separately represented. I do not appear for him.

The LORD CHIEF JUSTICE: Does he show cause against the rule?

Mr. LOW: I do not know, my Lord. He is represented by my friend, Mr. Dodd. Stated shortly, my Lord, the grounds against which the rule was obtained were, I think, practically four. It was first said that the Justices were not entitled to be objectors to the grant of licenses. The second question was that, if they are so entitled, and if they do in fact object, that they are not entitled to adjudicate ——

The LORD CHIEF JUSTICE: To sit and adjudicate?

Mr. LOW: To sit and adjudicate on the application. It was said that in these particular cases the Justices were disqualified by reason of certain steps which they had taken to get information concerning the houses; and it was suggested also that, by doing that, they had prejudged the case.

The LORD CHIEF JUSTICE: Was not there a Chapel resolution, too?

Mr. LOW: I am coming to that now. Then there was a fourth objection, which only applied to one of the Justices. It was said that he was a member of a body which was actively engaged in opposing the renewal of these licenses, and that he had been party to a resolution in opposition to them. My Lord, the evidence—I think it will be convenient, before going into that, to refer to the really two important questions of law that are raised—the important questions as to whether Justices, under such circumstances, can object and can adjudicate. I think it will be well to call your Lordship's attention first to the evidence that has been filed on behalf of the Justices.

The LORD CHIEF JUSTICE: Will you hand up copies of the affidavits of the Justices, please? (Same handed.)

Mr. Low: The first affidavit is that of Mr. Robert Mowbray Howard, who is the Chairman of the Bench. He says—"I am Chairman of the Justices of the Farnham Petty Sessional Division of the County of Surrey, and have been upon the Commission of the Peace for the said County for the past 24 years. (2) I have read the joint affidavit of Edgar Kempson and Jane Emma Smith filed in these proceedings, and the true facts relative to the several matters therein referred to are as follows. (3) I was not present at the General Annual Licensing Meeting for the said Division held on the 7th March, 1901, but I am informed and believe that a letter from Sir Richard Henry Wyatt, the Clerk of the Peace for the County of Surrey, was submitted to the Licensing Justices then assembled, and that its consideration was adjourned until my return home, I being then absent. The said letter was in the terms following:—'Surrey Quarter Sessions. County Hall, Kingston-on-Thames, 26th February, 1901. Dear Sir. Licensing. I beg leave to inform you that the attention of the County Licensing Committee has been called to the large number of licenses existing in the present parishes of Farnham and Farnham Rural. The number given in the report to the Easter Session, 1892, for that area is 93, with a population of 12,376, and it is believed that the number of licensed houses is, at the present time, within two or three of that number, and taking the present population at 14,000, they find one licensed house for every 155 of the population, which is largely in excess of any other parish in the County. The Committee are of opinion that some steps should be taken whereby the licenses of a substantial number of such houses should be discontinued; and I was directed by the Committee to send this expression of their opinion to you for the consideration of your Bench at the next Annual Licensing Meeting.'" Then, my Lord, the deponent goes on to say—"On

my return I caused a special meeting of the Justices to be convened for Thursday, the 2nd May, 1901, to consider (*inter alia*) the said letter. At such special meeting, the Committee, consisting of Lieut.-Col. Joseph Charles Smyth Windham, Arthur Wakefield Chapman, Charles Gould, K.C., and Temple Cook, Esquires, and myself, were appointed (*inter alia*) to consider the said letter, and to report to the Justices fully upon the subject therein referred to. (5) This Committee met from time to time, and considered certain comparative statistics as to population, number of licenses, and other things of a general character, tending to show how the Division of Farnham compared with other Divisions in the County, and how the County of Surrey compared with neighbouring counties in the matter of ratio of population to licenses. At a meeting of Justices of the Farnham Division, specially convened, and held on the 13th July, 1901, the Committee reported their proceedings and the said statistics, &c., to the Justices then assembled, by whom their report was adopted *nem. con.*, and the Committee were then authorised and empowered to obtain further information as to the condition, position and other circumstances of each licensed house in the Farnham Urban District. (6) As the result of the adoption of such report, and pursuant to the authorisation so given to them by the Justices assembled at such special meeting, the Committee directed the Clerk to the Justices to send to each of the owners of licensed houses and holders of licenses within the Division the circular letter referred to in paragraph 1 of the said affidavit." That, my Lord, was a circular sent out to each license holder interested in licensed property. "Dear Sir,—The attention of the Justices of the Farnham Petty Sessional Division having been called by the County Licensing Committee to the excessive number of Licenses in the Division, a fact which cannot in the opinion of the Justices be disputed, and the Justices having appointed a Committee to make enquiries in connection with the matter,

with a view to a reduction in the first place of licenses in the Farnham Urban District where such excess is most pronounced, I am directed by the Justices to so inform you, and to suggest that anything you may desire to say upon the subject addressed to me will receive their best consideration." Then, my Lord, the deponent goes on to say—"27 replies were received, but they were purely negative in character. The Committee held several sittings to consider the general question referred to in the preceding paragraph, and eventually on the 7th December, 1901, unanimously decided to inspect all the fully-licensed houses in the Farnham Urban District, so as the better to enable them to make their report to the general body of the Justices. Accordingly, between the said 7th December, 1901, and the 21st January, 1902, I, in company with one or another of my colleagues upon the Committee, inspected all save 10 of the fully-licensed houses in the Farnham Urban District. These 10 were, I am informed and believe, inspected by two of my colleagues. Charles Gould, Esq., a member of the said Committee, did not, so far as I am aware, visit any of the said houses. The information obtained upon such inspections was added to, and forms the schedule to the report now produced and shown to me marked R.M.H. 1."

The Lord Chief Justice: There are two.

Mr. Low: The first exhibit contains some information which is not included in the second exhibit, which I shall have to draw your Lordship's attention to, called R.M.H. 2. The difference, my Lord, between them is this: One was made for circulation only among the Magistrates, the other was made for circulation among any of the applicants who chose to take it and to pay for it, and the difference ——

Mr. Justice Channell: The second one included all that was in the first, except the private and confidential part?

Mr. Low: Yes, my Lord, certain particulars as to the trade and so on of the houses that it was not thought fair to go

beyond the Magistrates themselves. Your Lordship will see at once, if you will refer to No. 13. No. 13 is the house that is called Queen Street Tavern. Queen Street Tavern is the case to which my friend referred in his application. There your Lordship sees there are a number of columns. It begins in the first column with the name of the house; then comes the owner, the Brewery Company, then the Lessee, if any; then the name of the licensee, Smith, and it states she resides on the premises; then it states, "Tied to owner for wines and spirits"; then under the heading of sleeping accommodation "common lodging house."

The Lord Chief Justice: You do not want to read it all.

Mr. Low: I wanted to call your Lordship's attention to the difference in the reports. This is the whole of that. Then, my Lord, in column No. 10 there are these particulars: 18 years in occupation, 7 years in own name, rateable value £17, rent £6, premium none, some small sum paid for stock-in-trade. In the next column "25 and 33 yards," and then in the last column, "General Remarks. Bar and taproom, which is small and poor; that there is a water-closet, which is good; that there is a water-closet and urinal in the passage, which is indifferent; and that the sheds in the back yard are dilapidated." Only in columns 10 and 12 is there any substantial difference. In column 10 all the facts given are these. It stops at 13, "18 years in occupation," and it does not say rent, premium, or anything about the stock. Then in the general remarks column it stops at "urinal in passage," and does not go on to criticise the nature of the accommodation, and leaves out the word "indifferent."

Mr. Justice Channell: And it leaves out the word "good," too.

Mr. Low: It gives the simple facts. It says "Bar and taproom," leaves out the words "small and poor." Then with regard to the water-closet it leaves out the word "good," and

with regard to the other accommodation it leaves out the word "indifferent," and that the sheds in the back premises are dilapidated. Substantially that is so with regard to all the particulars given in this. Continuing the affidavit, my Lord, I get to paragraph 10, "Enquiries were now made, and information only obtained in every case from the licensees or the person actually in charge of the licensed premises at the time of our inspection, which person in every case was either the wife or daughter of the licensee, and enquiries were not made nor was information sought from lodgers, employees or others as stated in paragraph 3 of the said joint affidavit of Edgar Kempson and Jane Emma Smith"—then there is the exception put in in ink—"save that in the case of one of the houses only, the 'Marlborough Head,' one of my colleagues has informed me that a member of the Military Police, who was stationed there, and was in fact in that sense a lodger, gave me certain information that his quarters there were comfortable. This statement was afterwards made by the Military Policeman in question upon oath at the adjourned General Annual Licensing Meeting. The information contained in column 12 of such report under the heading 'General Remarks' as to the condition of the various premises was the result of our personal observation only." "On the 6th February, 1902, the Committee presented their said report, marked R.M.H. 1., to a Meeting of the Justices of the said Division, specially convened for that purpose, and at which meeting the said Charles Gould, Esq., also presented a minority report, signed by himself alone, and some portions of which he afterwards withdrew. The said report marked R.M.H. 1. was adopted *nem. con.*, and certain recommendations by the Committee upon the proposed procedure at the then forthcoming General Annual Licensing Meeting were adopted by a majority of 8 to 3, subject to some slight alterations in matters of detail, which were confirmed at a subsequent meeting of the Justices

[illegible]

or licenses shall be refused renewal." Then paragraph 12, "The notices convening special meetings of the Justices and the reports referred to in this my affidavit were, I am informed, and verily believed, sent to each Justice whose name appears on the official list of Justices acting in and for the Division of Farnham. (13) It is, I believe, the fact (as stated in paragraph 16 of the said joint affidavit of Edgar Kempson and Jane Emma Smith) that the said report marked R.M.H. 1 contains some inaccuracies, but they were of a minor character, such for instance as a slight discrepancy (in the case of two or three houses) in the statement as to their rateable value, and also in other cases the distances from nearest licensed house were perhaps not quite absolutely correct. In two instances a house was described as 'tied' which was tied only to another house of the same owner in the said district, and not to a Brewery Company. But I say that the said inaccuracies were all corrected by the evidence that was given upon oath at the hearing of the said applications." Paragraph 14, "On the 1st March, 1902, the General Annual Licensing Meeting for the Division was held. At the outset of the proceedings the Superintendent of Police read his annual report, and after retiring for a few minutes the Justices returned and considered and dealt with a certain application for a new license and certain renewals. Upon reaching the first application for renewal in the Farnham Urban District one William Henry Hayes, a Surgeon-Major retired, and a resident in such district, rose in Court and stated that he objected to the renewal of all the licenses in Urban Farnham. I, as Chairman, and on behalf of the Justices, thereupon directed the said William Henry Hayes to give the requisite seven days' notice of his objection for the adjourned meeting on the 14th March, as required by law, and to state therein the grounds of his objection." I ought to tell your Lordship that those were altogether different objections to the Justices'.

The Lord Chief Justice: He was not put up?

Mr. Low: No; I was afraid that might be a misconception. As regards six out of the nine houses which we are dealing with here to-day, they were objected to both by Hayes and the Justices. With regard to three there were no objections by Hayes, only objections by the Justices. "I then, on behalf of the majority of the Justices, made objection to the renewal of the 45 alehouse licenses in the Farnham Urban District, and on the names of the applicants being called by our Deputy Clerk, such applications were directed to stand adjourned to the Adjourned General Annual Licensing Meeting, to be held on the 14th March, 1902. I added publicly that the reason why the majority of the Justices thus raised objection to these houses was in order that every one of the licensees, and this is very important, that every one of the licensees might have equal opportunities of bringing evidence before us, and the Justices be thus enabled to decide such cases with perfect justice and fairness. When I stated the objection to the renewal of these licenses on behalf of the majority of the Justices, George Goodall, Esq., one of the Justices present, stated in open Court that he dissented from it, and dissented altogether from the whole plan of procedure of the Justices in reference to the 45 alehouse licenses in the Farnham Urban District, and he subsequently retired from the sitting, and took no further part in the consideration of such objections, or in the decisions given thereon. The said Charles Gould, Esq., also then present, publicly stated, 'I join with Mr. Goodall; I have the same objection as to everything.' He, however, continued to sit, and took part in all the subsequent proceedings in connection with the consideration of the objections referred to and the decisions given thereon. (15) At the conclusion of the Annual Licensing Meeting, the Justices then present, viz., Col. Windham, Col. Fitz Roy, Capt. Bacon, Arthur Wakefield Chapman, Fred. Mangles, and Alfred Josiah Benthall, Esquires, and myself,

instructed our Deputy Clerk, Mr. Richard William Mason, solicitor, who was and is acting as Clerk in the absence through illness of his father (Mr. Richard Mason) to serve formal notice in each case, requiring the licensee to attend in person at the Adjourned General Annual Licensing Meeting, and to state the grounds which we then gave to him, and which as to the 'Queen Street Tavern' and the other 8 houses fully appear from the notices which are now produced to me in a bundle and marked R.M.H. 3, and numbered 1 to 9." These are the notices. They are not quite uniform in form. Your Lordship will see the form of the notice if you will take the one as to the Queen Street Tavern, the one we are dealing with. Omitting the formal parts, it gives the licensee notice "That the Adjourned General Annual Licensing Meeting, to be held for the Farnham Petty Sessional Division of the County of Surrey, on Friday, the 14th day of March, 1902, at 10.30 o'clock in the forenoon, the renewal of the license which you now hold for the sale by retail of intoxicating liquors on the premises now occupied by you, being the Queen Street Tavern, in the parish of Farnham aforesaid, in the said County, will be opposed on the following grounds." Then it sets out those grounds. There are four of them—(1) That a fully-licensed house at the place where your premises are situated is not required; (2) that having regard to the character and necessities of the neighbourhood, the license which you now hold in respect of the said premises is unnecessary; (3) that the premises which you occupy, and for which you hold the said license, are not structurally adapted for use as a licensed house, and are not convenient for police supervision; (4) that the provision of public conveniences and other sanitary arrangements on the said premises are not adequate." Then in this case is added in ink, which is not added in all of them—"(5) That the conduct of the business carried on upon the said premises has been of an unsatisfactory or disorderly character. I hereby further, acting under the

instructions of the said Justices present at the General Annual Licensing Meeting as aforesaid, give you notice to attend in person at the said Adjourned General Annual Licensing Meeting." Then paragraph 16 refers to notices served by Hayes. There are six of them, and they proceed on various grounds. I do not think it is necessary to read them, but in substance they are much the same as the Justices'. Then paragraph 17—"Prior to the Adjourned Annual Licensing Meeting the Justices decided that it would be a convenience to persons having business at such adjourned meeting if they could have copies of the said report marked R.M.H. 1, and accordingly our Clerk was authorised to issue copies thereof to such persons interested as might apply for same at five shillings per copy, after first deleting therefrom in every case any details which might have been therein respecting rent, goodwill paid on entry, and any comment on the condition of the house as the Justices found at the date of their inspection. A complete copy was, however, produced and given to Mr. Avory, K.C., at the hearing." That is a copy of exhibit 1.

The Lord Chief Justice: That is the confidential report.

Mr. Low: Then paragraph 18, "At the commencement of the adjourned General Annual Licensing Meeting on the 14th March last objections to certain Justices were taken by Counsel for the applicants (as set out in paragraph 13 of the said joint affidavit of Edgar Kempson and Jane Emma Smith), and the Justices so objected to (including myself) retired to consider such objections made to us, when each of the Justices so objected to, after carefully considering the matter, decided to continue to sit. The reasons which actuated me in coming to this decision, and which I know also influenced my colleagues, were that we had arrived at no previous decision as to whether to renew or not to renew any of the licenses in the said district, and that in causing notices requiring the personal attendance of licensees to be served we were not in any way 'taking sides'

or committing ourselves to any particular view as to the propriety or otherwise of renewing any license, but had merely taken the steps which the statute imposed upon us to put matters into proper train for duly considering, and after due notice to the applicants, each case upon its merits and upon sworn evidence which alone we intended to have regard to. (19) On returning into Court we, together with the one other Justice (the said Charles Gould, Esq.) who had not been objected to by Counsel, then resumed the consideration of the objections to the licenses, and heard the evidence on oath, including that submitted by the said William Henry Hayes in the 9 or 10 cases in which he appeared"—some of them, my Lord, were unsuccessful—"of which the Queen Street Tavern was one. In the Queen Street Tavern case the case in opposition to the license was conducted, and the witnesses in support of such opposition were called by the Counsel (Mr. Hinde) for the said objector, Dr. Hayes. I, as Chairman"—(this is in answer to something said in the affidavit)—"I, as Chairman, merely exercised what I believed to be the inherent right of the Bench, and on its behalf put such additional questions to the Police and other witnesses as is usual in licensing cases, and as we deemed necessary to elucidate the facts connected with the houses. As before stated, the licensee of the Queen Street Tavern (Jane Emma Smith) was professionally represented, and no objection taken on her behalf to my doing so, nor was any suggestion made that any question put from the Bench travelled outside the ground stated in the notice served upon her. The Bench, at the close of the evidence in this case, and after hearing the speeches of Counsel and Solicitor for the said objector, Dr. Hayes, and the applicant respectively, reserved its decision, as in all the other cases, until the whole of the cases should have been heard, and thereupon further adjourned same, as also the said Annual Licensing Meeting, to March 27th. And I say that in all of the cases in which we

refused to renew the license the applicants themselves called evidence and cross-examined the witnesses. (2) One of our number (Temple Cooke, Esq.), although present on the first two days and the adjourned meeting, was not present at the subsequent proceedings on later days, and took no part in the decisions arrived at by the Bench. The same applies to A. J. Benthall, Esq."—that is the Justice, my Lord, who was specially objected to.

The Lord Chief Justice: The Chapel gentleman.

Mr. Low: "Retired under the circumstances mentioned in his affidavit which I have had an opportunity of perusing, and which, so far as it relates to his conduct on the Bench (of which alone I have any knowledge), is quite accurate."

(Adjourned to to-morrow.)

IN THE HIGH COURT OF JUSTICE.
KING'S BENCH DIVISION.
DIVISIONAL COURT.

ROYAL COURTS OF JUSTICE,
Friday, 2nd May, 1902.

BEFORE

THE LORD CHIEF JUSTICE,
MR. JUSTICE DARLING AND
MR. JUSTICE CHANNELL.

THE KING *v.* THE LICENSING JUSTICES OF FARNHAM.

Ex parte A. SMITH and Others.

Mr. HORACE AVORY, K.C., and Mr. STIMSON appeared for the Appellants.

Mr. FRED. LOW, K.C., and Mr. HOHLER appeared for the Respondent Justices.

Mr. CYRIL DODD, K.C., appeared for Charles Gould, Esq.

The LORD CHIEF JUSTICE: You had got as far as paragraph 20.

Mr. Low: Yes. Paragraph 21 says—"In the interval between the Annual Licensing Meeting and the Adjourned Meeting I did receive by post from a gentleman residing at Reigate, who described himself as the Secretary of the Surrey Congregational Union, a copy of what I have now no doubt was the Resolution referred to in paragraph 11 of the said joint affidavit of Edgar Kempson and Jane Emma Smith"—that is the paragraph referring to the meeting in the chapel—"but

although I believe I mentioned to my colleagues the fact that I had received such a communication, the same was not read to them, nor was it considered by them or me." In regard to this next paragraph, 22, I should tell your Lordship that affidavits have been made by all the Justices for whom I appear re-affirming this particular paragraph.

The LORD CHIEF JUSTICE: I understand that.

Mr. Low: "In arriving at my decision to refuse the renewal of the License of the Queen Street Tavern, as well as the other eight alehouse licenses, the subject of the present proceedings, I did not entertain or take into consideration, nor was my decision based upon, or affected by, any evidence, matter or thing save the evidence so given as aforesaid upon oath, and the admissions made in open Court by the Advocates representing the parties during the hearing of the applications for renewal of the said licenses at the Adjourned Annual Licensing Meeting. I further say that so anxious was I that both I and my colleagues should be guided by such evidence on oath, and by admissions, and by them alone, that I requested our Clerk to read over again to the Justices, when assembled to consider their decisions, such evidence which at the time it was given in Court we had caused to be carefully taken down in writing in each case." I have the notes of the evidence, if any point should arise upon that. "On the 27th day of March last I was served at the instance of the said Jane Emma Smith and the Farnham United Breweries, Limited, the Licensee and Owners respectively of the said 'Queen Street Tavern,' with the notice of appeal to Quarter Sessions now produced and shewn to me marked R.M.H. 5." With regard to that paragraph, it is upon that I shall have to address your Lordships in a moment as to this application to your Lordships for a Mandamus being a proper remedy at all in this case. The notices were served before these proceedings for Mandamus were commenced, and the appeals are now actually pending, and the parties are under

recognisances to prosecute those appeals. "On the 29th of March last and the 1st of April instant the said Appellants, with their Sureties, duly entered into recognisances to prosecute and try each appeal at the next available General Quarter Sessions of the Peace for the County of Surrey. From enquiries made of the Clerk of the Peace for the said County, I find that such Appeals have been duly entered, and now stand for hearing at the ensuing Midsummer Quarter Sessions. My means of knowledge sufficiently herein appear." Then there is a joint Affidavit by Colonel Windham and Mr. Chapman, two of the Justices, who are the two Justices who are spoken of in the terms of the Affidavit as having in fact themselves inspected ten of these houses.

The Lord Chief Justice: : Verifying Mr. Howard's Affidavit.

Mr. Low: If your Lordship pleases, and also affirming for themselves that they inspected these particular ten houses, and that they also only acted upon the evidence that was given to them in Court.

Mr. Justice Channell: That cannot mean that they did not act on their own observations after inspecting, surely?

Mr. Low: As a matter of fact, if your Lordship sees the notes of evidence you will find all the material facts that were known to them were in fact repeated in evidence.

Mr. Justice Channell: That I understand. Otherwise it would be like a jury having a view and then saying they did not act upon it.

Mr. Low: Yes. Of course I say if necessary they were entitled to so act. Then, my Lord, comes the Affidavit of the Justice who has been singled out in consequence of the chapel resolution, Mr. Bentall. The paragraph in the affidavit of the Applicants which refers to this matter is paragraph 11. I think it is necessary to have that before your Lordship before reading Mr. Bentall's reply.

The LORD CHIEF JUSTICE: Cannot you tell us generally?

Mr. LOW: They set out the terms of the Resolution.

Mr. JUSTICE CHANNELL: Is it not your case that this gentleman in fact retired?

Mr. LOW: He did in fact sit up to a certain point.

Mr. JUSTICE CHANNELL: After he was objected to?

Mr. LOW: What happened was this. There was an objection made without mentioning him at the beginning of the sitting, objecting to all the members of a body called the "Surrey Congregational Union." Mr. Bentall says, in his Affidavit, that he is not a member of that body, and that he did not appreciate until later in the proceedings that he was meant to be indicted by that objection, and he explains in his Affidavit how it was he was present at the meeting, and what part he took in it. The only material part is the Resolution, and the Resolution, I think, is material; it is this: "That this meeting of the Surrey Congregational Union Southern Districts note with satisfaction the efforts of the Farnham Magistrates to reduce the number of licensed houses in this ancient town, which are in excess as to number of population with most other towns in Surrey." Apart from everything else, I should have thought that it was a remarkably innocent resolution. It does not pledge anybody to an attack on any particular license; all it says is that they view with satisfaction, as obviously all the authorities in the county did. The County Licensing Committee had themselves expressed the view that it would be expedient to reduce these licenses, but there is no suggestion in this affidavit that in any way the cases of these nine people who are now complaining to your Lordship were in any way prejudged. Mr. Bentall's answer to that is contained in his affidavit. He says, "From the 16th April, 1901, to the 15th April, 1902, I was Chairman of the Farnham Urban District Council, and by virtue thereof was" a member of the Bench. He has read the affidavit. Then he says, "Though I am

Deacon of the Congregational Church at Farnham as therein stated, I am not a member of the Surrey Congregational Union, nor have I for some years past been a member of the Executive of that body. 3. That the meeting referred to in the said paragraph as held on the 5th of March last, was not a meeting of the said Surrey Congregational Union, but was a public meeting or conference (which any one in the town was free to attend), promoted by the said Union, and held in the afternoon after the meeting of Delegates of the said Union held earlier in the day at the Congregational Church, Farnham, and which Delegates' Meeting I did not attend for the reason that I am not a member of the Committee of the said Union, nor was I even a Delegate thereto from my church. Such public meetings or conferences are held from time to time in various parts of the county, and I am informed, and verily believe, that the arrangements for holding the public meeting or conference in question were made some six months previously." That is upon the point that it was immediately after the adjournment of the license—"So far as I am aware, no agenda of such public meeting or conference was published, and when I attended same (which I naturally did as a Deacon of the church in which the meeting was held), I had not the slightest knowledge that licensing matters would be referred to, still less that they or any section of the Farnham Licensing Justices of whom I was then one would form the subject of a resolution. In fact, I have since learned on enquiry made since reading the affidavit of Edgar Kempson that the matter cropped up unexpectedly on the initiation of the local minister, who was present. 4. The resolution referred to in the said paragraph 11 of the said affidavit was put by the Chairman to the meeting in the usual manner. I did not vote or in any way give expression to any opinion in respect to such resolution or the subject to which it referred, nor did I take any part in the matter. 5. I had and still have no knowledge whatever to whom the

Chairman of such public meeting referred to when he said that they were doing what they could to oppose some of the licenses on special grounds." That refers to the speech which is spoken of in the affidavit. "Neither had I then nor have I now any knowledge whatever of the Committee referred to in such paragraph as a Committee who instructed Counsel to oppose the renewal of certain licenses, nor have I at any time had any communication with any person in reference to the opposition thus referred to by the Chairman of the Meeting. 6. I did not at any time prior to the 15th March, 1902, mention to any of my late colleagues upon the Farnham Bench the fact that I was present at the said public meeting referred to, nor have I at any time communicated to any one of them any matter or thing that transpired at such meeting. 7. I was present at the Adjourned Annual Licensing Meeting of the Farnham Division on the 14th March, 1902, when Mr. Avory, K.C., on behalf of certain Applicants, objected to any Justice sitting who had attended a meeting of the Surrey Congregational Union. Neither date nor place was mentioned by Mr. Avory, and I did not realise, in fact it never occurred to me, that he was referring to the public meeting I have already mentioned, but concluded that he was referring to some meeting of the Congregational Union of which I have already said I am not a member On the following day, the 15th March, 1902"—The hearing of these cases took three days, and it was on the second day when this particular license for the Queen Street Tavern was involved. "On the following day, the 15th March, 1902, during the hearing of the objection to the renewal of the license of the Queen Street Tavern, I first became aware that Mr. Avory's objection had reference to the public meeting at which I was present, under the circumstances set out in this my affidavit, and though personally of opinion that my mere presence at such public meeting did not disqualify me as a Licensing Justice, I nevertheless in deference to the

objection retired from the Sitting, and took no further part in the licensing proceedings. 9. The Licensing Justices had previously decided to defer their decision in all cases until the whole objection had been heard, consequently I took no part in any consideration of the evidence given upon the hearing of the objections to the renewals of any of the 45 ale-house licenses in the Farnham Urban District with a view to determining if any particular license should be granted or refused; neither did I at any time discuss with any of my colleagues the merits or demerits of the Queen Street Tavern, or any other licensed house objected to. 10. The above facts are within my own knowledge." Then there are the affidavits of the other Justices in the other cases.

The LORD CHIEF JUSTICE: Put Bentall out of the question for a moment. Am I right in thinking that the Committee was Colonel Windham, Mr. Chapman, Mr. Gould, Mr. Temple Cooke and Mr. Mowbray Howard?

Mr. CYRIL DODD: Except that Mr. Gould retired from the Committee.

The LORD CHIEF JUSTICE: I am not saying anything at present. See if I am right as to those names.

Mr. LOW: That is right.

The LORD CHIEF JUSTICE: Of course, I know as to some objections, Mr. Hayes took them; we will leave Mr. Hayes out.

Mr. LOW: He has taken objection to six.

The LORD CHIEF JUSTICE: That Committee decided—I am not speaking of the individual members—that general objections should be taken to all the licenses.

Mr. LOW: General objection to the whole 45.

The LORD CHIEF JUSTICE: Did all the five sit on the hearing or not?

Mr. LOW: I will have a list made out if your Lordship would prefer it—a tabulated statement, showing who sat on each day, whether committee men or not,

The LORD CHIEF JUSTICE: Do you say some or one of them sat on all of the days?

Mr. LOW: Yes, some sat on all the days.

The LORD CHIEF JUSTICE: I only want to understand. You are going to contend, notwithstanding that four Magistrates—three or four, I am leaving Mr. Gould out—were gentlemen who had given notice that they thought notice of objection ought to be given, they still might sit on the hearing.

Mr. LOW: Yes.

The LORD CHIEF JUSTICE: That seemed to me the most important point at first.

Mr. LOW: The notice was not given—I think it is an important distinction—solely on behalf of the members of the Committee; the notice was given on behalf of all the Justices who sat on the 1st March, with the exception only of Mr. Goodall and Mr. Gould.

The LORD CHIEF JUSTICE: I am not putting it against you, I only want to get the facts, but the houses picked out in respect of which the notices were given were houses which had been reported upon by the Committee?

Mr. LOW: Yes. I should say this on that point—I do not know quite what your Lordship means. There were no houses in fact picked out at all.

The LORD CHIEF JUSTICE: I thought except eight or ten.

Mr. LOW: No. It was thought, having regard to this great number of licenses, that it would be right that all the full licenses in that particular district should be considered.

The LORD CHIEF JUSTICE: I see what you mean—it was more like a schedule of all the licensed houses, with particulars, than a picking out of any.

Mr. LOW: Yes; there was not a single house picked out in any way. There are 45 fully-licensed houses in this Farnham Urban Division, and notices on behalf of the Justices were served on all those 45. In addition to that, notices in respect

of some ten or a dozen were served independently by Mr. Hayes, and of those, curiously enough, six form part of the nine which are before your Lordships to-day. I think really all the evidence that I need trouble your Lordships with was before the Bench. Mr. Gould, who is represented here independently to-day, has filed an affidavit. I do not know what part he takes in these proceedings, whether he shows cause or what he does. I do not propose to read Mr. Gould's affidavit myself.

Mr. Cyril Dodd: Perhaps I had better read it without commenting for the moment.

The Lord Chief Justice: Yes, read it now. Which case is it sworn in?

Mr. Cyril Dodd: It is sworn in all, I am told. He says: "I have read a copy of the joint affidavit of Edgar Kempson and Jane Emma Smith, sworn in the above-mentioned Provisional Court on the 10th day of April, 1902, in support of a rule nisi for a Mandamus against the County Justices of the Farnham Bench *re* the refusal by the Licensing Justices of the renewal of a license heretofore held by the said Jane Emma Smith in respect of the 'Queen Street Tavern,' Farnham, with a copy of which said rule I have been individually served. (2) For reasons which at the time I fully stated to my colleagues on the Committee of Justices (appointed on the 2nd of May last), referred to in the said affidavit, I declined to visit the 45 alehouses mentioned in the said affidavit, or to take any part in the discussions which subsequently took place amongst the members of the said Committee upon the subject of their respective visits to the said alehouses, or the preparation of the 'tabulated report' based on their said visits mentioned in the said affidavit. I recommended that the said Committee should not circulate amongst the Licensing Justices information or evidence which they had obtained under their said visits. My said colleagues, however, still entertaining different views to my own on the subject, I, on the 1st of February last, withdrew

from the said Committee. I also had a printed memorandum sent out through the Clerk to the Justices contemporaneously with the issuing of the said report, which, however, I never read until it was produced at the Licensing Meeting on the 14th of March last. I informed the said Justices of the objection which I had entertained in regard to the said report, and the visits upon which it was founded."

The LORD CHIEF JUSTICE: Have we got that printed memorandum?

Mr. CYRIL DODD: I have it. I will not read it; but it sets out in strong language his reasons. "I did not concur in the resolution mentioned in the fifth paragraph of the said affidavit which refers to one of a number of procedure resolutions which a majority of the licensing justices subsequently approved in regard to the opposing of the renewal of licenses by the Licensing Justices at the Licensing Session. On the contrary, I and also Mr. Goodall in the said affidavit mentioned (who next after the Chairman is the senior acting Magistrate on the Farnham Bench), and another Justice—who did not afterwards sit at all as a Licensing Justice—strongly opposed the whole plan of procedure with regard to the said licenses as mentioned by Mr. Goodall and myself at the Licensing Meeting on the 1st of March last (paragraph 7 of the said affidavit). (4) Paragraph 8 of the said affidavit is not correct in stating that the grounds of opposition were settled and determined by the said Committee of Justices. What really occurred was that immediately after the adjournment of the Licensing Meeting on the 1st of March last, all or most of the Licensing Justices present thereat met in their private room to discuss some general licensing business. That after the transaction of such business it was proposed that the Justices should proceed to consider and settle their notices of grounds of objection in respect of the said 45 licenses, and their procedure in regard to sustaining the same at the Adjourned Licensing Meeting, I retired from

the said meeting. The said Mr. Goodall had left before I left. (5) I did not attend any other meetings of the Licensing Justices until the adjourned hearing on the 14th of March last. On the first case being called on, I asked to see the notice of the grounds of objection which had been served on the licensee, and on finding that such notice purported to have been given on behalf of the Justices generally, I protested against the notice having been given in that form, after Mr. Goodall and I had, on the 1st of March, announced our dissent from the whole of the proceedings of the objecting Justices. (6) Neither I nor the said Mr. Goodall were parties to supplying the persons interested with the partial copy of the tabulated report of the Committee of Justices mentioned in the 10th paragraph of the said affidavit. On the contrary, we protested both before going into court on the 6th of March last, being an ordinary Petty Sessional Bench, and also in court (the Chairman declining himself, as he had also done on the 1st of March. He stated, as we asked him to do, that he was acting only on behalf of a majority of the Justices, and preferring that we should ourselves announce our dissent) to the supplying of a partial copy only, on the ground that we considered that if the parties interested were to have any copies at all they should have a full copy. (7) I did not attend the Adjourned Meeting of the Licensing Justices on the 27th March last, as I knew from a meeting of the Justices which had been held a few days before that my vote either one way or the other would not affect the result in regard to the 9 licenses, the renewals of which were on that day refused, and I did not desire to have again publicly to state any difference of view between myself and my fellow Justices. (8) The hereinbefore mentioned differences between the majority of my fellow Justices and myself have been entirely upon points of principle as to what (especially with reference to the provisions of Section 42 of the Licensing Act, 1872) it is competent for Licensing Justices to do both at

and out of licensing meetings in the way of themselves originating, maintaining and sustaining by evidence procured by them their own objections to the renewals of licenses, and themselves adjudicating thereon. (9) All the facts hereinbefore deposed to by me are, except where otherwise shown, within my own knowledge." There is another affidavit which has not been filed, made after reading the affidavit of the Justices. It only deals with one paragraph.

The LORD CHIEF JUSTICE: I do not think that should be read. Mr. Gould is possibly entitled to make an affidavit to show his position, but this is not to be turned into a contest between Mr. Gould and Mr. Howard.

Mr. CYRIL DODD: Mr. Gould does not desire that. What I am instructed to do when my turn comes is this—to bring before your Lordship what the points principally were, and to leave it to your Lordship's decision entirely, without any argument.

The LORD CHIEF JUSTICE: We do not want affidavits answering Mr. Howard.

Mr. CYRIL DODD: I do not know that is necessary. The affidavit is only one to state that he put in his suggestions, and Mr. Howard made a mistake in thinking that he made a minority report. It was a document showing his reasons.

The LORD CHIEF JUSTICE: You said that appeals were lodged in answer to this application.

Mr. LOW: I was going to put that now. I do not wish to prejudice myself in any way in dealing with Mr. Bentall's case, because some different consideration might possibly with regard to that particular case arise on this very point. For the moment I will treat it, if I may, that Mr. Bentall's case is out of consideration. The general rule in all cases of Mandamus, even in licensing cases, although there have now been some exceptions to it, has been that a Mandamus is not available where there is another effective remedy. This case goes some-

what further than that, because not only in this case is there under the 27th Section the effective remedy of an appeal to Sessions——

The LORD CHIEF JUSTICE: But it is being pursued.

Mr. Low: The parties are actually pursuing it, and at the present moment are bound to pursue it. On the 27th of March the decision of the Justices was given and, by the affidavit, by, I think it is, the 1st April all the necessary steps in order to bring an effective appeal to the next Quarter Sessions had been duly taken. After all that, and on the 15th April, this rule nisi is obtained. There is one case that is reported in 68 Law Times, page 225. It is The Queen against the Licensing Justices of Bristol. There were two points in that case, one quite immaterial to our consideration here to-day—that is the question whether due notice of appeal had been given to the other side—because since the case of Boulter there is no other side. There, an appeal had been brought, and it turned out afterwards that the notice of appeal was invalid, and consequently the appeal failed, which of course would be a much stronger case for relief than the present case is; notwithstanding that it was held by Lord Coleridge and Mr. Justice Cave that Mandamus would not lie. The last part of Lord Coleridge's Judgment is all that I need read: "Then it has been argued that we may grant a writ of Mandamus to the Licensing Justices of Bristol. But the answer to that is, that the proper remedy is an appeal to the Quarter Sessions. That course has been pursued in the present instance, and the appeal has not been successful. In my opinion, therefore, both these orders must be discharged." Mr. Justice Cave agreed with that. There were two cases, that and the Licensing Justices of Gloucester, in which the same point was taken at the same time. There is another case in which the matter had arisen prior to that, The Queen *v.* Smith, which is reported in Law Reports, 8, Queen's Bench, p. 146. That was, I think, a refusal of a

transfer. The first question discussed in that case was whether under that particular section there was in fact an appeal at that time, and it was held there was an appeal, and then it was held that the Justices having refused the certificate on other grounds than that prescribed by the section they were wrong in doing so, but the Court refused the Mandamus on the ground that the applicant might have appealed to Quarter Sessions.

The LORD CHIEF JUSTICE: I do not quite understand. Would this point that the magistrates had no jurisdiction to sit and hear, be a ground for an appeal to Quarter Sessions?

Mr. LOW: No. I do not know why.

Mr. HORACE AVORY: Certainly not, my Lord.

The LORD CHIEF JUSTICE: I never heard of it. It seems to me you might appeal and say that they ought to have come to another conclusion. I do not see how they could raise the point that the magistrate was disqualified at Quarter Sessions.

Mr. LOW: I do not know why you should not on appeal raise any ground of appeal.

The LORD CHIEF JUSTICE: The way it would be put, it seems to me, would be the Quarter Sessions are entitled to the assistance of a trial by a proper tribunal to guide it. You cannot try before Quarter Sessions on the merits. That does not seem to me to be a remedy for this particular grievance.

Mr. LOW: The appeal to Quarter Sessions is a re-hearing. They are entitled to a re-hearing from the beginning. If the Justices of Quarter Sessions on any ground come to the conclusion that the parties have not had a proper hearing below, I do not know why they should not have that tried.

Mr. JUSTICE DARLING: May the Justices appealed from sit?

Mr. LOW: No, so far as personal constitution goes, it must be a wholly new tribunal—that it expressly provides.

Mr. JUSTICE DARLING: They are parties to the appeal.

Mr. LOW: Yes; and now, of course, they are the only parties who can be parties to the appeal.

Mr. Justice Darling: Mr. Bentall could sit at Quarter Sessions, because he withdrew, and did not decide the case.

Mr. Low: In point of fact he is no longer a Magistrate. He was an *ex-officio* magistrate, and his time has expired, so that difficulty will not arise unless he is elected again before the appeal is heard.

Mr. Justice Darling: That is possible.

The Lord Chief Justice: You say "re-hearing." This question ought not to be raised. It seems to me rather a futile appeal, if there has been no original proper consideration by a proper tribunal.

Mr. Low: My point would be this, that the parties after bringing their appeal to Quarter Sessions have waived any consideration of that sort; they have elected their remedy; they have got the two remedies. Supposing, I mean, the Justices to be wrong.

Mr. Justice Channell: Supposing when you get to your appeal at Quarter Sessions it is felt that the County Magistrates themselves began this matter by drawing the attention of the Farnham Justices to the fact.

Mr. Low: Yes, I was going to put that consideration in a moment. My friend's objection to this jurisdiction of the Justices seems to me, if it is a good one, to cover practically the whole of the members of the Sessions.

The Lord Chief Justice: As to that, it could be said that was a general letter (I am not saying that it is), and did not refer to the particular committee.

Mr. Low: Then of course there is another matter which your Lordships will have to consider in this connection too. All the Justices for the Farnham Division had this report before them, and your Lordship is going to be asked to make an order upon the Justices, I suppose the Respondent Justices to this application, on which I suppose they could be attached if they did not

obey it, to hear and determine a particular matter on the hypothesis that the Respondent Justices are disqualified from hearing it.

The LORD CHIEF JUSTICE: I do not say that. There is a distinction.

Mr. LOW: I should have thought the proper remedy in such a case, even if there were still an appeal, was prohibition, and that there was ample opportunity.

Mr. HORACE AVORY: I beg pardon, my friend was not present. We actually asked the Justices to adjourn in order that we might apply for a writ of prohibition, and they refused to adjourn for that purpose.

Mr. JUSTICE CHANNELL: How does that help the point—I do not quite see.

Mr. HORACE AVORY: My friend was saying the more appropriate remedy would be prohibition.

The LORD CHIEF JUSTICE: Mr. Low, of course you are coming to the substance. There may be a difference between people who are only Justices of the Farnham Division, and have seen the report (I am not in the least saying there is a difference, but there may be), and people who actually have taken part in preparing it.

Mr. LOW: Possibly there may be some difference, but of course it would be a difference of degree only if the fact of having seen the report and having had the information which is not sworn information. I shall have to deal with that when I come to Section 42.

Mr. JUSTICE CHANNELL: The effect of our making the rule absolute might be a Mandamus to Mr. Gould to hear and determine.

Mr. LOW: I was going to say that Mr. Gould and possibly Mr. Goodall——

Mr. CYRIL DODD: There are 25 Justices, I am told.

Mr. LOW: Mr. Gould was one of the committee men.

Mr. Justice Channell: He never acted; he took the view that it was not proper to mix himself up with it.

Mr. Low: He acted as a member of the Committee and in preparing the report, but he did not agree as to what was done in consequence of the report. With regard to the matter my friend was referring to just now about prohibition, I think there is a little substance in that. Mr. Avory himself asked the Justices to adjourn in order that he might get a Writ of Prohibition. They did actually adjourn, and there was plenty of time between the 1st of March and the 27th of March, when these Justices determined the matter, to have prohibited them if prohibition would lie, therefore it is not a case in which even the remedy of appeal lies. There would be two remedies.

The Lord Chief Justice: I think there is authority—it was cited once in one of these cases a few weeks ago—that if the tribunal has not been properly constituted, Mandamus will go to a proper tribunal to hear it. I think it was in the Sunderland case. You are rather on a question of form than substance.

Mr. Low: The Sunderland case was a case where the confirmatory order had been made and the license was brought up to be quashed. There the question did not arise as to this matter of practice, because you had got something——

The Lord Chief Justice: I thought there was a case in which it was settled that there had not been a proper tribunal, and they must have a proper tribunal to hear it. It is not very material.

Mr. Justice Channell: The point is, there has not been a proper hearing at present.

Mr. Low: That is said. My answer is that whether it be so or not, they cannot come here after they have themselves started an appeal. In other words, that that is a waiver. If there is any difficulty about that, that is waived by the fact that they are appealing from it. There is a case on this point, but it is some time ago. It is The Queen and the Justices of

Kent, reported in Volume 44 of the Justices of the Peace, p. 298. The head-note is this: "W. having applied to the Licensing Justices for a license for a new hotel, and the three Justices who were sitting having refused it, afterwards applied to the Court for a mandamus to have the case heard again on the ground that B., one of the Justices, was interested as owner in one of the licensed houses near the proposed hotel. The affidavits showed that B.'s wife had succeeded to the licensed house, and was tenant for life; but it was a small house without hotel accommodation, and not likely to be injured by the new license being granted. Held (1) that a mandamus could not be granted because the decision not having been set aside or quashed on *certiorari*, the case could not be heard again. (2) If a *certiorari* were applied for the affidavits ought to state that the party applying, and his solicitor, did not know at the time that one of the Justices was interested." There one of the grounds of refusal of Lord Chief Justice Cockburn, I think it was, was this. He says: "I am of opinion that this rule ought to be discharged, because the proceeding adopted here is not the right one. This was an application founded on the objection that one of the Justices was interested in the subject matter to be decided; and the application should have been for a *certiorari* to quash that decision, and not for a mandamus." If I might stop for a moment there, one knows with regard to Boulter's decision and the others the difficulties that have arisen, or rather that is has been suggested have arisen, with regard to granting *certiorari* in these license cases. If it were necessary to argue it, I should be prepared to argue that one can still, and I think Mr. Justice Channell in a case did express a very strong view as to that, and Lord Justice Vaughan Williams, in the Sunderland Magistrates' case, says very clearly that in his view, although the licensing meeting is not now a Court within the meaning of the Summary Jurisdiction Act, still there is no reason why *certiorari* should not be granted in spite of the case your Lordship will remember.

Mr. Justice Channell: There is one case, a decision that it cannot.

Mr. Low: There is one, The Queen *v.* Sharman. Then he goes on: "I quite agree that there may properly be an application for a mandamus, directing the Justices to hear a matter over again, if their former adjudication had been imperfect, because all the necessary ingredients had not been taken into consideration, as for example, in the cases cited where the Justices were directed to confine their attention to four grounds, and they had not considered those four grounds. In such a case they may have heard the application, but they had not given any adjudication or determination of the proper subject matter which they had to decide. But here it is different. They have heard the matter, and though one of the Justices may have been interested, yet it was, nevertheless, a determination, and stands good till it is set aside by the Court on a proceeding by a *certiorari.* This is not like the other cases, where something external to their decision had been omitted. This judgment is one which is not vicious *in se.* It can only be by an application for a *certiorari* that such a judgment can be set aside, for nothing more was wanted to its completeness. Therefore the proper course here was to bring up that judgment to be quashed. It has been said there was no adjudication, because no license was granted. But I think there has been an adjudication, for the Justices have determined and decided the matter of the application, and that determination is reported in some form or other in their minutes. That adjudication has not been brought up, and, therefore, the present application is erroneous, and there ought to be no rule. As to the point whether the party had acquiesced in the decision, we need not decide further than to say that it is a very sound rule of practice that a party making such an application should show that neither he nor his solicitor knew the interest of one of the Justices at the time of the hearing, and the case

is quoted to show it is a rule of practice, and a very good one." I should pray that case in aid a little on the question here of waiver by, in fact, bringing the appeal—that is, it is quite clear the parties can acquiesce, and so deprive themselves of this remedy by mandamus. I do not think I need trouble your Lordship further with the question of form. I may now pass to what is really the substance in this case. I think I am not wrong in saying it is one of the most important and interesting questions that has arisen on this Licensing Act for a very considerable time.

The Lord Chief Justice: Important, if you like; I do not know much about the interest.

Mr. Low: It is interesting at all events to the parties on both sides who are concerned in this matter.

The Lord Chief Justice: I thought you were speaking of general interest.

Mr. Low: What we have to get from your Lordships, if your Lordships say we are wrong on the matter of form, is a decision as to whether (I think it really comes to this) Section 42 of the Licensing Act of 1872 as amended verbally by the 26th Section of the Licensing Act of 1874, has so cut down the discretion of Justices with regard to refusing renewals that they are unable to exercise that discretion unless they are set in motion by somebody outside their own body whom it is convenient for the purpose of this case to call the objector.

The Lord Chief Justice: Mr. Avory said, in moving, his points were two; first, could the Justices themselves start an objection; secondly, if they have started, could they adjudicate upon it. Those are his two points.

Mr. Low: Yes. The point I have just put involves, I think, both those points. Section 42 of the Licensing Act is headed "Provisions as to Renewal of Licenses." It says: "Where a licensed person applies for the renewal of his license, the following provisions shall be effected:—(1) He need not attend in

person at the General Annual Licensing Meeting unless he is required by the Licensing Justices." Then the words in brackets are imported from the 26th Section of the Act of 1874, "For some special cause personal to himself so to attend. (2) The Justices shall not entertain any objection to the renewal of such licenses or take any evidence with respect to the renewal thereof unless written notice of intention to oppose the renewal of such license"—then again the words in brackets from Section 26—"and stating in general terms the grounds on which the renewal of such license is to be opposed has been served on such holder not less than seven days before the commencement of the General Annual Licensing Meeting." Then comes the proviso upon which everything in this case really turns: "Provided that the Licensing Justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any license to a future day, and require the attendance of the holder of the license on such day, when the case will be heard and the objection considered, as if the notice hereinbefore prescribed had been given: (3) The Justices shall not receive any evidence with respect to the renewal of such license which is not given on oath." Then comes this important provision: "Subject as aforesaid, licenses shall be renewed and the powers and discretion of Justices relative to such renewal shall be exercised as heretofore." As your Lordships know, those words referred to the existing legislation, principally to the statute of George IV., the statute of 1828. Now, my Lords, I think this proposition is perfectly clear both on the construction of the statutes and on the authorities of Sharp *v.* Wakefield and the other cases, that except for that section which I have just read there is an absolute discretion vested in Justices either to grant or to refuse a renewal of a license in just as full a manner as they have a discretion to grant a new license, and I think it might be useful at this point, with regard to the general position of Licensing Justices in this matter, if I

were to call attention to the judgment, and particularly to the judgment of Lord Hannen, in the House of Lords in the case of Sharp *v.* Wakefield. I am reading from the reprint at the end of Paterson. The judgment is at page 406. The report is in 1891 Appeal Cases, page 173. Lord Hannen says: "My Lords, I do not consider it necessary to occupy your lordships' time with observations on the 9 Geo. IV., c. 61. It was long ago decided, and I think rightly decided, that the Justices were under that Act entitled and bound to consider the needs of the neighbourhood on an application for a license to a person seeking to keep a house for the sale of exciseable liquors, and that their discretion was equally wide in the case of a person already keeping such a house, as in one where the application was by a person not before licensed." Then his Lordship refers to the cases. "But it was contended that the general discretion given by the Act of George IV. was restricted by the Act of 1872 and by the Act of 1874"—that is by this very section, the 42nd. "By the first of these Acts the renewal of licenses is dealt with, and by the 42nd section certain changes are made in the procedure where a renewal is asked for." He sets out the three, then reads the words, "Subject as aforesaid," &c. He goes on —"This, therefore, clearly leaves the discretion of the justices unfettered, where the provisions of the 42nd section have been complied with. The argument for the Appellant was chiefly based on the qualification of the above-mentioned 42nd section of the Act of 1872, added by the first clause of the 26th section of the Licensing Act of 1874. That clause is as follows:— Then he reads it. "Rightly to understand this enactment it is necessary to revert to the earlier legislation on the subject of the personal attendance of applicants for licenses. By the 12th section of the Act 9 George IV., only those applicants were excused from personal attendance who could prove by sworn testimony that they were hindered by sickness, or infirmity, or by any other reasonable cause, in which case an authorised

person might attend for them. The 42nd section of the Act of 1872 excused the applicant for a renewal of his license from attendance unless required by the Justices. This left it in the power of the Justices to require the attendance of all applicants for renewed licenses. This power might be exercised so as to cause inconvenience to applicants required to attend on grounds not having reference to their particular case. Instances have been brought before the Courts where Justices have expressed and acted upon a general intention with regard to all licenses, whereas it is their duty to consider each individual case on its own special merits. The object of the 26th section of the Act of 1874 appears to be to enforce this duty, and to require the Justices to particularise the special ground on which they consider the personal attendance of the applicant necessary. The word 'personal' is fully satisfied by construing it as meaning 'for a cause in which the applicant is personally interested, and not merely interested as one of the general body of licensed persons.' For these reasons it appears to me that the judgment appealed from is correct, and should be affirmed." With reference to that judgment I call attention to this, that it was clearly the opinion of Lord Hannen, and must have been the opinion of the other Judges in the House of Lords, that this 42nd section was really only a matter of procedure, that is, that it was not intended in this section to cut down the discretion of the Justices so that they could not exercise the powers that were in their hands before that section was passed, unless they were put in motion by somebody else. The words that have generally been suggested in this connection as being against me are the words in the proviso, "on an objection being made," and it was said in one case—it is a case I must refer to presently—the decision of Mr. Justice Hawkins in the Anglesey case——

The Lord Chief Justice: The Queen and Williams.

Mr. Low: Yes. It was said that an objection to be good could not be an objection by a person to whom it was to be

made. I do not know how that may be. I am not sure, as it was referred to, although it comes a little out of time, that it would not be convenient, as that was the case cited to you in granting this rule, to go at once to that decision, and consider the way Sir Henry Hawkins dealt with this particular section. It is reported in 65 Law Journal, Magistrates' Cases, p. 12. Part of the judgment was read to you on making the application, very properly, the part that was sufficient for that purpose; but there is a great deal more in the judgment with regard to the general question than came before you then. The facts are quite sufficiently disclosed in the judgment which begins at the top of p. 14. Mr. Justice Hawkins says: "It will be observed that this notice"—that is, the notice that had been given—"is stated to be given by direction of the Justices, but the chief constable treats the objection as his own. It is stated by the applicant in her affidavit that the chief constable retired with the Justices into their private room. This, however, is denied on oath by the chief constable and by the Magistrate (Mr. Edwards), whose affidavit is before me. On this point I think the applicant is in error, and I am satisfied that the chief constable made no objection on the day in question, and that all that occurred on that day came from the Justices alone. The case, as presented to me for the applicant, was that she applied for a renewal of her license on the first day of the annual meeting; that no notice of any objection had been served on her before the commencement of that meeting, nor was any objection made during that day; that, in the absence of such notice or objection, the justices had no jurisdiction to adjourn the consideration of her license for a future day, but ought to have renewed the license as a matter of right. If the absence of such notice or objection on or before the day appointed for the holding of the general annual meeting would entitle her to the renewal she sought, the question to be solved would in a great measure depend upon whether what took place in the

Justices' private room, coupled with the announcement in Court, amounted to an objection such as that contemplated by the proviso in section 42 of the Licensing Act, 1872 (1). This question, notwithstanding the cases cited on the part of the Justices"—then Mr. Justice Hawkins proceeds to cite three cases which we have here, which are the cases in which this point has arisen, but all more or less *dicta*; I do not think they were necessary to the decision of any of the cases. They are The Queen *v.* Farquhar and The Queen *v.* The Justices of Merthyr Tydvil, and I think The Queen *v.* Eales. "I should have felt great difficulty in answering in the affirmative, because, though of course I should have followed those cases had they judicially decided the question, I do not look upon them as having done so. In the first of them the applicant for the renewal of his license attended the annual licensing meeting and paid the fees for his license to the Justices' Clerk, who said, 'All right,' and the applicant left the meeting, believing he would receive his renewal as of course. He did not receive it, for the Justices, after he had left the meeting, adjourned the consideration of his license to the adjourned meeting, giving him no notice thereof, and at such adjourned meeting, without having required the attendance of the applicant, refused the renewal, because on their own inspection they considered the value of the house to be insufficient to satisfy the requirements of 35 and 36 Vict., c. 94, ss. 46 and 47. No notice of the adjourned meeting had been given to the applicant, nor had he been required to attend. A mandamus to hear and determine the application was granted upon the ground that the Justices had refused the license upon an objection raised by themselves without giving the applicant an opportunity of being heard. Upon the question whether the Justices could object upon their own knowledge, Mr. Justice Blackburn seems carefully to have avoided giving any judgment; he merely said"——

Mr. Justice Darling: "I do not say it is not impossible"—that is, I do not say it is possible.

Mr. Low: It is evidently a misprint. "Assuming that the Justices might of their own knowledge make the objection themselves, and I do not say that it is not impossible that they might." I do say it is possible that they might.

Mr. Horace Avory: It is a most negative judgment.

Mr. Low: It is equivalent to saying, I do say it is possible they might.

The Lord Chief Justice: I think it means it may be possible.

Mr. Justice Darling: He probably meant to say, I do not think it impossible.

The Lord Chief Justice: There are too many negatives altogether.

Mr. Justice Darling: If he said: "I do not say it is not impossible"—that is, I do not say it is possible—it would be dead against you.

Mr. Low: It was read in this very case as an authority for the proposition. "In the latter case Mr. Justice Smith, without any argument on the question, merely said, 'The Queen *v.* Farquhar'"—(this shows how Mr. Justice Smith read it)—"which has been cited without comment," 'would seem to show that the objection mentioned in the proviso (to section 42) may be made by the Justices themselves.' There was no argument on the point, which it was unnecessary to determine, as the judgment was given upon another point. In the present case, looked at as an objection made as contemplated by the proviso in Section 42, I do not think"—and these are the words that are relied upon against me—"I do not think that that which took place in the private room of the Justices can be said to amount to one. In the first place, it was a mere determination to adjourn the license; and secondly, I do not think the Justices can object under the authority of the proviso; but

they have abundance of authority for what they did independently of it. The 2nd Sub-Section of Section 42, to my mind, has application to objections made by persons other than the Justices. The earlier part of the sub-section points out what is required to be done by objectors who claim to put themselves in a position to be heard in opposition to the license at, or at any time after, the commencement of the annual meeting. The proviso admits of objections being made at any time during the meeting, subject to the provision made for giving the applicant for the license an opportunity of being heard when the Justices come to consider the matter. It could not have been in the contemplation of the Legislature that Justices would or might be objectors under that sub-section, for the Justices are the only persons to whom an objection can be made; they are the only persons required to take action upon it, and they are the only persons who are to hear and determine it. In so doing they act judicially. It is difficult to suppose that those by whom this enactment was passed intended to depart so far from one of the first principles of justice, that no man shall adjudicate upon his own case. Yet it would be so if Justices were allowed to adjudicate upon their own objections, made to themselves. The language of the proviso, 'on an objection being made' can only mean made to the Justices. In saying this much, I have confined myself strictly to 'objections made' under the 42nd Section. I shall hereafter have a word or two to say with respect to the duties and powers of Licensing Justices, apart altogether from that section. Assuming, however, my view to be incorrect, and that the Justices may be objectors within the meaning of the proviso, then I think they must take their objections in the same way that other persons are required to make them—namely, in open Court." Of course that was all done in this case. "That such other persons are so required was expressly decided by the Divisional Court in The Queen *v.* The Justices of Merthyr

Tydfil, but in so deciding the Court expressed no opinion that a different rule applied to Justices, nor is there, as far as I can see, any reason why all objections made under Section 42 should not be governed by the same rule. They may indeed be made in very few words." He refers to Daykin *v.* Parker, where somebody got up and said, "I object"—"but the fact that the objector objects ought to be announced in Court. The result so far amounts to this, that if the contention of Mrs. Williams could be supported, she was entitled to the renewal, for up to the end of the day fixed for the annual licensing meeting there was no notice of any objection, nor was any actual objection made, and nothing therefore to warrant an adjournment of her license under the proviso. Lord Coleridge seems to have favoured this view in saying, 'If no objection was made'"—this was in the case of Daykin and Parker, I think—"to the renewal at the first general annual licensing meeting, the Justices may find that they had no jurisdiction to adjourn the hearing of the application, but were bound to grant a renewal.' This dictum, however, was clearly not intended as a decision upon the point, and it evidently did not meet with the approval of Mr. Justice Mathew in The Queen *v.* Howard, nor does it with mine." That deals with the bearing of Section 42. Then Mr. Justice Hawkins turns to consider the general law on the subject. He says: "This case does not, however, in my opinion, depend upon the question whether objection was made on the first day of the meeting, nor whether the adjournment was made under the proviso contained in the 42nd section, nor whether the Justices could treat themselves as objectors under that section; but upon the much broader question, whether Licensing Justices have vested in them an almost unlimited discretion to adjourn from time to time as they may think fit the consideration of any renewal, as to the propriety of granting which they may *bona fide* entertain doubt or suspicion, with a view to making enquiries as to the circum-

stances which have occasioned such doubts, and, if they turn out to be in the opinion of the Justices groundless, to throw them aside."

The LORD CHIEF JUSTICE: It really comes to a wider contention of the Justices than it is necessary for you to contend here. I am not saying you are right. The question whether they can adjourn them generally for that reason does not arise here.

Mr. LOW: The question, if I may put it in my own way, would be this, I think: merely because the Justices used some of the procedure indicated by Section 42—that is, used the notice—they must give notice to the man to attend, that is clear—and because they supplement that notice, the notice for him to attend, by a statement of the matters which they mean to investigate, that is the ground upon which they are calling him up there, does that preclude them from the exercise of their general powers under the Statute? That really, I think, sums it up.

Mr. JUSTICE DARLING: Do you say they could refuse him his license without anybody objecting—either themselves or anybody else?

Mr. LOW: I do not know that it is necessary for the purposes of this case to say it, but I think so. As long as they get the man before them, as long as he has an opportunity of being heard, and as long as he has no complaint to make on that score of unfair treatment, I think they can, in fact I do not think there is any doubt about it; but what is put against him in this case is——

Mr. JUSTICE DARLING: Is not there a doubt about it? I thought I caught the words "on objection made."

Mr. LOW: Yes; but the whole point of the authorities is that that does not cut down their general powers. Putting it as much against me as I think I fairly can, the strength of the case against me would seem to be this, that if the Justices in the notice which they must under the statute give put it in the

form that certain objections would be taken, if they extend it and do not simply confine themselves by saying, "You must attend here on such and such a day," if they amplify it and give grounds of objection, then they constitute themselves in some sort of way litigants, and it would be unfair in that case for them to adjudicate on the objection. I confess I cannot see myself how that can be so. I do not mean to say that I cannot conceive a case in which Justices might have made themselves so much partisans in regard to a particular license that it would not be right in the circumstance of that case that they should adjudicate, but that I do not think is the case we have to deal with to-day. I cannot see how it lies in the mouths of the applicants for a mandamus to say this—"Because you Justices have not only given us notice to come up before you, but in addition to that because you have had the fairness to indicate to us the subject matter which you will have to deal with when we do come, therefore you, the Justices, have made yourselves so much parties to the proceedings that it would not be right that you should adjudicate upon them." That is the position that I think is taken up here. I do not wish to weary your Lordships with reading unnecessarily a word of authority. If one looks at this judgment of Mr. Justice Hawkins, which is put so much against me, and compares the latter part of it with the former, it simply seems to come to what I have been saying, because Mr. Justice Hawkins expressly says that the Justices here, apart from Section 42 altogether, have full power and full discretion to deal with the matter, and that they had dealt with the matter, and he would not interfere with them.

Mr. Justice Darling: Before you leave that, you say the Magistrates must give notice to the licensed holders to attend—they must adjourn the meeting and give them notice to attend—but you say that if they come, then the Magistrates may refuse the licenses, although no one has made any objection.

Mr. Low: Yes, I think so.

Mr. JUSTICE DARLING: Very well. Now the Statute says: "Provided that the licensing justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any license to a future day, and require the attendance of the holder of the license on such day, when the case will be heard and the objection considered." Whose objection?

Mr. LOW: The objection that has been made, if any; but it does not prevent them considering any objection that would impel them to exercise their discretion of refusal.

Mr. JUSTICE DARLING: No; but you have said, if they give him notice, and get him there, they can refuse his license without any objection, either their own or anybody else's.

Mr. LOW: Anybody else's.

Mr. JUSTICE DARLING: Then, on what do they refuse the license?

Mr. LOW: The exercise of their general discretion under all these statutes. Take the case I was putting, it was put several times in argument, the case of Boulter and the Kent Justices. The Lords pointed it out to the appellants; they said, "supposing a man gets up in Court and objects, and goes away and nothing more is heard of him; he simply says, as it was held in one case without giving any reasons, 'I object to the granting of these licenses,' the application is adjourned, and notice is served upon the licensee to attend on the adjourned day. The objector does not appear, and nothing more is heard of him. Have the Magistrates jurisdiction then to deal with the matter?" They have got the man there, and they have got to exercise their discretion in the interests of the public as to whether there should be a license or not. It was pointed out that they clearly could—in other words, that the exercise of the discretion of the Justices cannot be at the mercy of an objector. The mere fact that nobody comes forward to inform them that

a license should not be granted is no reason at all why they should not exercise the jurisdiction they have got in them either to grant or refuse.

Now, my Lords, I am purposely not reading any further in Mr. Justice Wills's judgment, because I think I have fairly stated what is the result of it, and I read the part which has been cited as being against me. Now, my Lords, the objection that is made in the present case is this: It is said, first, because these Justices have obtained these reports ——

The Lord Chief Justice: And seen the houses.

Mr. Low: And seen the houses—had what we call a "view" —that they had so prejudged the matter that they were disqualified from dealing with these matters.

The Lord Chief Justice: They always do have a view; at least they used to, before they grant a new license.

Mr. Low: Before they grant a new license almost invariably. I am speaking rather without evidence to support me; but I think it is no unusual thing for Justices to view public-houses in their neighbourhood, even if it is not a new grant.

Mr. Justice Channell: Is that the way in which the view and the reports are in fact used, because I do not think I quite understand that?

Mr. Low: I think it is put two ways against me; the first ground is the Justices having made their objections are disqualified from hearing it; but there is also the further ground which is clearly suggested, and that is this, that by having done what they have done, made these enquiries, and so on, they come within the doctrine applying to bias—that is, they had so prejudiced their minds ——

The Lord Chief Justice: Even if they had not given the notice they could not have sat on Hayes's notices.

Mr. Low: That is so.

Mr. Justice Channell: Everybody who had made the report —might everybody who had received the report?

Mr. Low: I do not know whether my friend says anybody who had received the report; certainly anybody who was instrumental in getting information to make the report. I should think that as a necessary consequence it must go further, because if the people who go and see the houses, and write down the result on a piece of paper, are to be disqualified, it is not very easy to see why people who read that information, and have that in their minds before going to attend the enquiry, should not also be disqualified.

Mr. Justice Channell: But on slightly different grounds; not that they are disqualified by way of interest, but that there has been communication behind the back of somebody which, having been communicated to them, they can hardly disregard.

Mr. Low: I think so. I did not think it was necessary to particularise the grounds.

Mr. Justice Channell: Suppose it is said a different person, a member of the Congregational Union, or something or another goes and says that the Queen's Head has got a very indifferent bar, and something or another, some of the things which are in this notice—that is giving private information, and there is a difficulty about that if it is not communicated.

The Lord Chief Justice: You get over it by saying (I do not say it is enough) that all these facts were afterwards proved in evidence in the cases. Surely if you do not get that, it would be difficult to say.

Mr. Low: I was going in a moment to put it a little higher than that. I was going to say this: Taking the report itself, I do not much care whether your Lordship takes the one or the two—that is, the fuller one or the barer one.

The Lord Chief Justice: Take the fuller one for this purpose.

Mr. Justice Channell: Pray do not go out of the line of your argument. I was only pointing out that I had understood

the objection to collecting this evidence beforehand to be a different head of objection to what you suggested. I did not think it meant the people were disqualified by reason of that, but that the result had been obtained in an improper way, just as if one of the parties to a proceeding goes and gives the Magistrate the information, and the Magistrate does not say (which is the only way of getting rid of the objection), "Somebody has given me this letter; what are the facts?" They enquire into it and disclose the whole facts, and the people have an opportunity of dealing with it. If information has come to the tribunal behind the backs of the parties, so that those parties do not have an opportunity of dealing with it in open Court, it is usual to set aside the proceedings.

Mr. Low: I quite appreciate what your Lordship says. What I was going to point out, and what your Lordships must consider in this case is, if I may say so respectfully, what after all was the nature of the information that was given to the Magistrates in these reports. The whole objection, I take it, of vesting the authority under the Licensing Acts in local Magistrates is that they should be familiar with the wants of their neighbourhood, that they should be familiar with the facilities there are in that neighbourhood for supplying intoxicating liquors, and so on. What, after all, is the information we get here. Take for convenience the case we have had before, the Queen Street one, that is quite as full as any of them. Of course, with regard to columns 2 and 3 and 5 there is nothing in those at all, because they would appear on the Register of Licenses. Then we come to column 6, and all that is disclosed in the column is whether in fact the houses are tied houses or free houses, and those facts, where they were relevant, were gone into on the enquiry. Then comes column 7, which gives the extent of sleeping accommodation for travellers and visitors, and whether refreshments, other than drink, provided, and what accommodation.

The Lord Chief Justice: If you read the answer, you need not trouble about the heading. The answer speaks for itself.

Mr. Low: The answer is this—"This house is a common lodging-house; two bedrooms for seven lodgers, approached by a ladder; teas and dinners; small trade in minerals." Supposing the Justices to know these facts, why should not they be made use of on the enquiry? Is a Justice, when he comes to deal with one of these licensing applications, to shut out from his mind the knowledge of everything that is not disclosed upon oath? In this case, I say that he had it all upon oath; but putting it as strong as it may be put against me, take this case. Suppose a Justice lives in a street, and there are three public houses in the street, and he says to himself, "There is no occasion for three public houses in this street; I know perfectly well they are not wanted." Is there any harm in his saying so to the other Justices at the meeting?

Mr. Justice Darling: If that is pressed against you, suppose this. Supposing somebody goes and objects to an inn in a town, and the Justice who comes from that street where it is says to the other Justices, "Why this is an absurd objection; I know that hotel, it is the best hotel in the town, it is the hotel where everybody goes in market time," and the other Justice says, "Yes, I know that."

Mr. Low: If my friend is right, that license ought to be brought up on writ of *certiorari* and quashed, because it was granted on evidence which the Bench had no business to consider. It really comes to this, that my friend must say that Justices in renewals, and I suppose too in granting, but at all events in renewals of licenses, must shut their minds to everything except sworn testimony, and they must go further than that, they must not inform themselves at all about the circumstances—that there is something improper.

Mr. Justice Channell: I do not think he will say that. What he will say is, when they have informed themselves about

it they must tell the party, and say, "What have you got to say to it?"

Mr. Low: That is what has been done.

Mr. Justice Channell: I know, but that is where the objection is, if any.

Mr. Low: That has all been done.

The Lord Chief Justice: We will come to your point about what was done afterwards; but apart from that here was a statement as to some details of indifferent accommodation in this particular house. If the Magistrates had acted upon that, would not they have contravened the rule in the section that they must only act on sworn evidence?

Mr. Low: I submit not.

Mr. Justice Channell: Unless they treat it as a sort of cause list, or something of that sort, which they are to enquire about and get the evidence out in proper form, having got the evidence beforehand in another way.

Mr. Low: If necessary, I should have been prepared to urge upon your Lordships that it would be only right and proper that at every licensing meeting such particulars as these should be brought before the tribunal that had to deal with the matter —such information I mean—there is nothing about the conduct; there is nothing to say that any breach of the law is going on.

The Lord Chief Justice: Let me have the notes of the evidence in the Queen Street case. (Same handed to his Lordship.)

Mr. Justice Channell: Personally I should agree. Is it not exactly like this which I think commonly happens—the police made a certain report?

Mr. Low: Yes; I was coming to that in a moment.

Mr. Justice Channell: The way that is dealt with is that the Magistrates communicate with the parties, and say: "What have you to say to this which the police say about you?"

Mr. Low: The practice is with many Licensing Sessions at the commencement of the Sessions for the police reports to be read in open Court. It may be, or may not, that the particular applicants are there at the opening, but still it is read. In regard to the fact stated in this tabulated form, there is nothing in the nature of a charge or anything of that sort—accusation, I mean—it is mere detail as to the condition of particular premises and as to their fitness as to affording accommodation. That one that is most against me is in the last column. Take it in the fuller report No. 13; what is it that it says? It says there is a bar and taproom which is small and poor; that there is a water-closet which is good; that there is a water-closet and urinal in the passage which is indifferent, and that the sheds in the back yard are dilapidated. Supposing the Justice I was referring to just now, who had informed himself of the nature of the premises, had communicated such facts as these to his brother Justices, and there had been an opportunity of answering them, where is the case? I do not know at all.

Mr. Justice Channell: None. The difficulty is, as far as I know, that in that case you left out the "dilapidated," and so on, when you communicated to the parties; the sheds are dilapidated, for instance. Supposing it is important—perhaps it is not; if you mentioned it to the party he might say, "Yes, they were very dilapidated, but I entered into a contract to have them repaired, and in a week they will be quite right."

Mr. Low: So far as my friend's application was concerned, he knew of the very point we are dealing with now. The affidavits state that the full copy was handed to Mr. Avory.

Mr. Horace Avory: That was only in Court in answer to an application served upon the Clerk of the Justices, who at first refused to produce it, and the Justices retired in order to decide whether he should produce it at all. They came back into Court, and said he might produce it, and it was merely handed to me in Court.

Mr. Justice Channell: Without producing it, they might quite properly have considered it in Court themselves, and when they got the people there, and enquired into these things, they might say: "What do you say as to the condition of your bar and taproom, and other things?"

Mr. Low: If one refers to the form of the notice of objection which is served it almost covers this ground, if not quite; I think it absolutely covers it. Take the fourth ground that was served, "That the provision of public conveniences and the other sanitary arrangements on the said premises are not adequate." That clearly deals with everything but the shed.

Mr. Justice Channell: That clearly raises the form of objection and puts them upon notice of it, and entitles them, and perhaps obliges them, to give evidence about the state of their premises. Most likely while they are doing it someone says, "What do you say about the taproom; is that small?" and most likely it is cured. I am pointing out this is a difficulty, and it is rather to be made out that it was cured.

Mr. Low: Take the third clause of the notice, which covers the taproom.

The Lord Chief Justice: What do you say your affidavit says as to its being cured? You did refer to it yesterday, but I am not sure that I noted it.

Mr. Low: It is paragraph 13 in the Chairman's affidavit. He says, "It is I believe a fact that the report contained some inaccuracies."

Mr. Justice Channell: He says the inaccuracies were all corrected by the evidence which was given upon them at the hearing of the application. That would seem to show that evidence on oath was given upon all the matters. Then if your Lordship looks at paragraph 15, at the conclusion of the meeting the Clerk is instructed "to serve formal notice in each case requiring the licensee to attend in person at the adjourned general annual licensing meeting and to state the grounds

which we then gave to him, and which as to the Queen Street Tavern and the other eight houses fully appear from the notices which are now produced to me in a bundle marked R.M.H. 3, and numbered 1 to 9. The said grounds were based upon the said report."

The LORD CHIEF JUSTICE: You are only going over what you have told us. What we want to see is any allegation that all the particulars about Queen Street, taking it for that house, the Queen's Head, were proved in evidence.

Mr. LOW: It is somewhere stated. I read it yesterday.

The LORD CHIEF JUSTICE: So I thought, but I want to see it.

Mr. LOW: My friend will find it. I was directing your attention to the notice that was served upon this point. You see paragraph 1 and paragraph 2 go to the situation and the public requirements.

The LORD CHIEF JUSTICE: There is ample notice.

Mr. LOW: Paragraph 3 says this—"The premises which you occupy, and for which you hold a license, are not structurally adapted for use as a licensed house."

The LORD CHIEF JUSTICE: There is ample notice; you need not trouble about that. The whole point is, did the evidence cover the facts which are alleged in those schedules on this part of the case—the evidence before the Magistrates?

Mr. LOW: I will have that found. Now, my Lords, I was suggesting that at all events all the information that is conveyed here is perfectly proper information to have before the Justices, and the only grievance there is in respect of that when it is in a tabulated form, as far as I can see, that it has been classified in this way, and it was communicated to all the Justices. Even supposing it may turn out on carefully analysing, for instance, the evidence that has been given about Queen Street Tavern, and which the Lord Chief Justice has in front of him, that there is nothing in the backyard being dilapidated, the Justices swear, and swear most emphatically,

all of them, in, I think it is the 22nd paragraph of the affidavit, and in paragraph 19, that the only considerations that moved their minds in refusing were the instructions disclosed upon the sworn evidence, and I do not suppose any human being suggests or imagines for a moment that any of the Justices would refuse a license, or that any of these licenses were refused because a shed in the backyard was dilapidated.

Mr. Justice Channell: I think it is a fair inference that if such a fact did impress any of the Justices' minds, he would in fact enquire whether the evidence was before him; how that fact was.

Mr. Low: As a matter of fact, no importance was attached to that question at all. Of course the question of sanitary appliances was clearly discussed.

The Lord Chief Justice: I have the evidence before me. "Water-closet at back indifferent, small and dirty; one water-closet private, one public." That is in the Queen Street case in the sworn evidence.

Mr. Low: In this particular case of the Queen Street Tavern, a matter that was very fully investigated no doubt, and which indeed was the head and front of the offending of this house, was that it was being used as a common lodging-house. It was thought to be almost approaching a scandal—three of these houses were involved in this—that a public-house having a full license should be carried on as a common lodging-house. It is shown in the evidence, I think—I do not wish to overstate it—that there were rooms in this house used for sleeping in common by the different sexes.

The Lord Chief Justice: I think it is only fair to state, in support of what you say, that the police constable, in this case the Superintendent, described all the rooms—how they were approached, how small they were, and then he described what I have read about the sanitary arrangements; then a gentleman was called to prove there had been a failure in the water, and

in consequence of a death in the house the filthy condition of the house had been inspected. I do not think there is anything in this case to show that any substantial matter was not given in evidence, and it is said they all acted upon what was proved.

Mr. Low: Upon what was proved. With regard to the shed, if it is put against me, I must leave it.

The Lord Chief Justice: No; it was only put as a test by my brother.

Mr. Low: I think I am stating it perfectly fairly in regard to all these cases, when I say this—I do not mean to say every minute detail may have been proved, but in substance the evidence that was considered by the Justices went to every substantial matter that is disclosed in this report.

Mr. Justice Channell: In other words, that this information was put before them not as information which they were to act upon, but as information as to matters that they were to enquire about, and did enquire about, beforehand.

Mr. Low: If your Lordship pleases.

Mr. Justice Channell: Put that way, it would be quite unobjectionable, I should think.

Mr. Low: That is exactly the way I should put it, if I am permitted to, and I think that is a fair statement, and that is sworn to by these Justices. Then if that is so, I submit that that disposes of this question of the report, only it is important in this connection to emphasise that, because so far as six of the houses are concerned that would appear to be the substance of the case, because of course in regard to six of the houses the very fullest machinery under Section 42 was used, and there was no objection, and the objector gave notice, and the objector did everything. I do not know that it is necessary to deal with this question of the report more than to say that, as Mr. Justice Channell has just said, my case is that the whole of the matters were before the Bench, that they were before the Bench not as

evidence in this form, but simply as evidence of the enquiries which had to take place, and that all the material matters were enquired into, and on sworn evidence.

Now, my Lords, I come to the next branch of the case, which is this. Supposing the Magistrates to be entitled, as I submit they are, to have these people before them, notwithstanding anything in Section 42, I think they would have been bound to have them before them if there had been no Section 42. No Justice could have been allowed of course to adjudicate upon the renewal of the man's license in his absence whether Section 42 had existed or not. They must have had the people before them. Assuming that they do have the people before them, and assuming that they are entitled to do so, how does that disqualify them from acting? There, my Lords, I cannot find any authority except only what Mr. Justice Hawkins says in this Anglesea case. I cannot find any authority for such a suggestion as that, because supposing the Justices are bound to have the people before them, and are bound to give notice to them to attend, what can be more absurd than to say that when the Justices get the people before them they are not to adjudicate upon the matter?

The Lord Chief Justice: I doubt whether any general rule can be laid down. I can imagine a case in which a Justice has picked out a particular house—has called particular attention to it by his objections—which it would be most improper for him to sit and adjudicate upon. On the other hand, you can imagine a case, which may be this case, where the Justices, knowing that this general question has to be ventilated, have had information as to all the houses put before them for the purpose of investigating each particular case afterwards, in which case I cannot see why they should be disqualified.

Mr. Low: I did, in different words, put that very point.

The Lord Chief Justice: I am not saying you did not put it; I am not putting anything myself. That is what I under-

stand your argument to be. I was merely indicating, and you have put it most fairly and ably for us, that I can conceive a case in which the fact that the Justices had raised that objection might be successfully used to prevent his acting. On the other hand, you can conceive a case in which he ought not to act. That is only with reference to there being an absolute hard and fast rule about it.

Mr. Low: That is my argument, it is quite conceivable there might be a case. Of course, this particular case we are investigating to-day is not the case of the individual Justice, it is *all* the Justices, acting presumably with a sense of their responsibility. All these Justices give these notices, and there is not a scrap of evidence that there was any sort of hostility by any particular Justice. I am not taking the tabulated statement, but it says that the Justices had that report before them, stating the number of houses, stating the proximity of the houses, and of course nobody reading the report, and nobody in fact reading the letter that was sent from the Chairman of the Licensing Committee could, considering the question, come to any other conclusion than that as a general proposition there were too many licenses in this town.

The Lord Chief Justice: You say this is geography and statistics upon which they would be allowed to form an opinion?

Mr. Low: That is so. They are either right or wrong. The evidence that supports them was all given, as your Lordship will see, by the Superintendent of Police, in fact; but nobody reading this could avoid saying that when you find that there was to every 155 men, women and children in this district a licensed place, as a matter of general principle that there were not too many licenses, but it is not suggested that when the Justices were considering that question, and there is no pretence for saying, that they had in their eye any particular house from which they would take away the license.

The LORD CHIEF JUSTICE: Mr. Avory read what we said in the Kingston case. Have you got the report there?

Mr. LOW: Yes.

The LORD CHIEF JUSTICE: Will you only hand it up.

Mr. LOW: The effect of it was that your Lordship said you expressly left this question open. There is another case upon this point of taking objections that I ought to have stated to your Lordship. It is the case of Baxter and Leche, in 79 Law Times, p. 138. The headnote is: "The applicant for renewal of a license attended on the day fixed for the general annual licensing meeting, and applied for the renewal. No notice to attend, or notice of objection, had been served upon the applicant prior to that day, but at the meeting an objection was taken by the Justices themselves, who thereupon adjourned the case, and more than seven days before the date of the adjourned meeting a written notice to attend by the authority and on behalf of the Justices, was served upon the applicant, and a written notice of objection was served by objectors, stating the grounds of objection, which included the objection taken by the Justices, but this notice of objection did not purport to be served by the authority of the Justices. The licensing justices heard the objections, and refused to renew the license. Held, that it was competent for the licensing justices, under sect. 42, subsect. 2, of the Licensing Act, 1872, to raise an objection themselves at the licensing meeting and then adjourn the case; at the notices served were sufficient under the section, and that the justices had jurisdiction at the adjourned meeting to refuse the renewal."

The LORD CHIEF JUSTICE: Whose judgment is that?

Mr. LOW: The judgments were the judgments of Mr. Justice Wills and Mr. Justice Kennedy, in the year 1898.

The LORD CHIEF JUSTICE: Was the Anglesea case cited in it?

Mr. STIMSON: No, my Lord, there was a case of the Queen and Anglesea cited, but it was not this case.

Mr. Low: One case of the Queen and Anglesea was cited.

The Lord Chief Justice: What does Mr. Justice Wills say?

Mr. Low: Mr. Justice Wills says this: "I do not entertain any doubt of the jurisdiction of the Magistrates to make the order they have made in this case. The first thing to do in all these cases is to look at the statute, and see what the Act of Parliament says. It seems to me to be perfectly clear, as the section says, that the person applying for a renewal of his license need not attend at the licensing meeting unless he is required by the licensing justices to attend; and the section goes on to say that the jusitces shall not entertain any objection to the renewal of the license, or take any evidence with respect to the renewal, unless written notice of the intention to oppose the renewal has been given. Then there has been added a proviso, and it says very definitely that the licensing justices may, notwithstanding that no notice has been given, on an objection made, adjourn the granting of any license to a future day, and may require the attendance of the holder of the license on that day when the case will be heard, and the objection considered as if the notice had been given. There is nothing in the Act which says that the magistrates cannot take the objection, and there is nothing in that procedure which prevents the magistrates themselves saying, 'This is a matter which ought to be dealt with and looked into before we decide whether the license is to be renewed or not.' The magistrates may take the initiative in the matter. The case of Regina *v.* Farquhar" (which is the case cited by Mr. Justice Hawkins) "shows that the objection may be taken by the justices themselves in open court at the general annual meeting, and that the justices may —as they did in this case—adjourn the case and the consideration of the objection to a future day; and these objections have always been from time to time taken by the magistrates." In every case there is that statement that there has been a long settled practice to this effect. "So in Regina *v.* The Justices

of Merthyr Tydfil, it would seem to have been assumed that an objection made by the justices themselves, if made in open court, would be a good objection with the proviso. That being the state of things, if no objection were made and no notice given, the appellant would be entitled to the renewal as a matter of course."

The LORD CHIEF JUSTICE: I doubt whether it is quite right to say that it was decided in the case of the Queen *v.* Farquhar.

Mr. LOW: It is a mere expression of opinion in the Queen *v.* Farquhar, no doubt, and I think it is fair to say that in most of the cases that is so.

(Adjourned for a short time.)

Mr. LOW: I told your Lordships I would hand in a tabulated statement of the Justices. Those are specified who sat on each day and those marked who were members of the Committee. I was calling attention to the decision of Mr. Justice Wills in Baxter *v.* Leche. I think I had got to this passage—"In the present case no objection can be taken on that ground"—that is, on the ground that there was no notice to attend.

The LORD CHIEF JUSTICE: It is very curious that Mr. Justice Hawkins' judgment should not have been cited in that case.

Mr. LOW: Yes, that is so. My attention was drawn to some other part of the argument, but I wished to cite this case earlier, but I had a very much worse report than this. It was a report, I think, in the "Justice of the Peace," not nearly so full as this judgment. "In the present case no objection can be taken on that ground, because the notice to attend given here was a notice given by the clerk to the licensing justices, and on behalf of the licensing justices. Now, what is to happen when the holder of the license does attend? The case of Dakin *v.* Parker shows that the objection to the renewal of the license taken in Court need not state the grounds of the objection, but that in such a case there ought to be an adjournment, and that seems to me to go on the ground that natural justice requires

that the person objected to shall have the opportunity of meeting the objection, and that, if he has not that opportunity, then the objection ought not to be entertained. Then in Whiffen *v.* Malling Justices, on an objection being made in Court at the General Licensing Meeting, the Justices adjourned the meeting and directed the superintendent of police to give notice of objection, which was accordingly done." I might just for a moment stop there, because I want to say something about the practice which has been, as your Lordships no doubt know, for a long while in force for the superintendent of the police to give these notices, but when he has done it, he has only done it, as it were, as the agent of the Justices.

The LORD CHIEF JUSTICE: He may or may not.

Mr. LOW: In many cases.

The LORD CHIEF JUSTICE: I do not think you can say always, because I know that there are cases in which the police authorities have sent round the town and have raised a number of cases in order that they might give the Justices evidence.

Mr. LOW: Yes; those Newcastle cases, for instance. I was going to say, if your Lordships are against me as to the Justices, of course it would cover any objection served by their direction, and the next step would be your Lordships would be asked to mandamus Justices, not because they had served the notices themselves, but because they had told somebody else to do it. The result would be, we should be brought down in all the cases to no investigation at all, unless an independent person took it up.

The LORD CHIEF JUSTICE: Unless somebody can be stirred up.

Mr. LOW: No, he must not be stirred up, he must stir himself up—at all events, he must not be stirred up by the Justices; that is what I mean—the thing must not be promoted in any way, the opposition must not be promoted in any way, by the Justices. If my friend is right, and they do promote it, they

cannot hear the application. Then Mr. Justice Wills goes on—"Then in Whiffen *v.* Malling Justices, on an objection being made in Court at the general licensing meeting, the Justices adjourned the meeting and directed the superintendent of police to give notice of objection, which was accordingly done. The Justices then decided the case upon an objection which was not stated in the notice; then there was an appeal to Quarter Sessions, and the Court gave the go-by to the objection on which the licensing justices had decided, and decided against the license holder on another ground, which was stated in the notice of objection, and the Court of Appeal upheld their decision. The procedure there had been fair"—and that of course goes to the whole root of the matter, because if my procedure has not been fair there is an end of my argument. "The procedure there had been fair, and the person objected to had the opportunity of meeting the objection. It seems to me that if the facts are that the license holder had not had any notice of objection, then natural justice would require that the objection should not be entertained, or if he has not had sufficient notice, then that may be a good ground either for adjourning the case or for not adjourning it and not entertaining the objection at all. In the present case the holder of the license had this seven days' notice of objection before the actual hearing given by persons other than the Justices, but in that notice appeared the objection taken by the Justices. There was therefore no hardship to the license holder in proceeding to consider the objection, although it was not formulated in terms at the first meeting; and further—if there were nothing more in the case—the solicitor for the license holder had, by his conduct in appearing and taking part in the case by calling witnesses and so on, although he had objected to the sufficiency of the notice, waived any objection of this kind that he had not had sufficient notice. Upon all these grounds it seems to me quite clear that this appeal must be dismissed with costs." Then Mr. Justice Ken-

nedy says: "I am of the same opinion. What happened in this case was that there had been no notice of objection prior to the date of the first meeting, but an objection was taken by the Justices, and a proper notice was given. The license holder got that notice, and there was stated in this case what was not stated in the case of Whiffen *v.* The Malling Justices, namely, that the notice was given to the license holder on behalf of the licensing justices to attend at the adjourned meeting. In Whiffen's case no notice to attend was given purporting to have been given by the order of the licensing justices; the person objected to need not have attended. He did, however, attend, and that was held to be a waiver of any objection he might have had. Then it was said that the notice of objection given by persons other than the justices ought to have stated that it was given by the authority of the justices. I cannot so read the section. That construction would appear to be adding something to the section which is not there at present. I do not for myself think, upon reading the section, that, supposing that there was no written notice at all before the day of hearing, the applicant could have done more than ask for an adjournment if an objection were then made. Then it would be the duty of the justices to do one of two things, namely, either adjourn the case or refuse to hear the objection if it was brought too late, and go on with the hearing of the case without looking at the objection. In fact, the license holder had full notice of objection given, and appeared to that notice, and took an objection which was bad; and, moreover, no injustice whatever has been done. The point before us is, whether or not there was jurisdiction in the magistrates to refuse to renew the license. We think there was jurisdiction, and that the magistrates were right."

The Lord Chief Justice: That goes further than either Farquhar or Merthyr Tydfil.

Mr. Low: Yes.

The LORD CHIEF JUSTICE: It seems to me to be a real decision on the point.

Mr. LOW: Yes; and it goes further than the Anglesey case, because the Anglesey case was not a real decision on the point. What his Lordship, Mr. Justice Hawkins, said in that case was after all only *obiter*.

Mr. JUSTICE DARLING: How was Mr. Justice Hawkins giving judgment?

Mr. LOW: He had been applied to in the Vacation for a mandamus in Chambers, and he considered the matter, and gave a considered judgment in Court.

Mr. JUSTICE DARLING: It was not a judgment of the Divisional Court.

Mr. LOW: No.

Mr. JUSTICE DARLING: This other is.

Mr. LOW: That is so. Now, my Lords, there has been one other pronouncement upon this matter. Of course I cannot use it in any way as an authority, but I propose to use it as far as it goes for the purpose of my argument. This matter came before Sir Edward Fry, sitting as Chairman of Justices. I do not quote it as authority, but I am only showing how the matter was, and I use it as part of my argument.

The LORD CHIEF JUSTICE: Did he give reasons?

Mr. LOW: I think so. It is referred to in volume 64 of "The Justice of the Peace," p. 642. In that paper of that date there is an article reviewing all the cases on this very question of licensing justices stating objections, and after referring to the cases that we have referred to here to-day, they say: "The most recent case on the subject is one that came the other day before the Long Ashton Licensing Justices of Somerset, with Sir Edward Fry, late Lord Justice of Appeal, as Chairman. The justices had taken objection to the renewal of the license to the 'Mariner's Arms,' and at the adjourned meeting counsel for the licensee and owner took exception to the notice of objec-

tion, as well as to the objection, on the ground that the objectors were the justices who were trying the case. After some argument, the justices retired to consult in private. On their return into court the Chairman (Sir Edward Fry) said that in the opinion of the justices the objection taken on behalf of the licensee and the owner ought not to prevail. The justices, he continued, entirely agree with the proposition laid down by the gentlemen who had addressed them that an interested party could not sit on the bench, nor could an opponent, and the only question appeared to be, were the justices either interested or opposing parties? It appeared to them that they were not. The duty vested in licensing justices was a discretionary one, and the gentlemen who addressed them contended that that discretion was contingent on an objection taken by a third person, and that the justices could not take an objection for the purpose of giving themselves an opportunity of exercising that discretion. It seemed an unreasonable construction of Section 42 of the Licensing Act, 1872, to suppose that the magistrates were absolutely deprived of any opportunity of exercising that discretion unless some third person gave them that opportunity. They thought they might take an objection for the purpose of giving themselves that opportunity, and by so doing they did not express any conclusion or any bias, beyond thinking it a question that ought to be enquired into. This was, he concluded, what they did, and what, in point of law they were entitled to do, and in point of law it was a proper construction of the notice of opposition." Now, my Lord, I think I may say, with the highest possible respect, I cannot put my argument more tersely, and I think, if I may say so, more conclusively than it is put there, and I do rely on that, not as an authority, but as a statement of the real meaning of this procedure under Section 42, that it does not limit the justices in any way to having their jurisdiction put in motion, and the exercise of their discretion depending upon the intervention of a third party.

That the mere fact that they think that cases merit enquiry, and that so they served a notice to bring the parties before them to have that enquiry investigated, is in no sense—I mean necessarily is in no sense (it may do so, as has been observed, but in this case it does not)—making themselves parties to the proceeding in a hostile sense at all, and that they are entitled to do that. While on that point, I should like to refer your Lordships just very shortly to what Lord Herschell said as to the nature of the proceedings before the Justices in Boulter's case, which is reported in 1897 Appeal Cases. I am going to read from page 569. What he says is: "The question is not one *inter partes* at all. The justices have an absolute discretion to determine, in the interest of the public, whether a license ought to be granted, and every member of the public may object to the grant on public grounds, apart from any individual right or interest of his own. The applicant seeks a privilege. A member of the public who objects merely informs the mind of the Court to enable it rightly to exercise its discretion whether to grant that privilege or not. A decision that a license should not be granted is a decision that it would not be for the public benefit to grant it. It is not a decision that the objector has a right to have it refused. It is not, properly speaking, a determination in his favour. It is, I think, a fallacy to treat the refusal as necessarily induced by a particular objector. Every member of the local community might object. Would they all then become 'the other party?' There is, in truth, no *lis*, no controversy *inter partes*, and no decision in favour of one of them and against the other, unless, indeed, the entire public are regarded as the other party, for if a license be refused on the ground that it was not needed to supply the legitimate wants of the neighbourhood, the decision is really in favour of the public at large. The provision contained in s. 2 seems then to me an additional reason for holding that an appeal from the 'act' of the justices in refusing a

license is not an appeal from a 'conviction or order' of a Court of Summary Jurisdiction." That I rely upon as showing that this does not come within the cases of litigation merely because a notice is given that the justices do not become litigants. All the justices say is, "We want the case enquired into, and we tell you the grounds."

I think that exhausts what I have to say on this subject. There is one matter possibly which I ought to have called attention to, as showing that the Justices have an interest in proceedings under the Licensing Act quite apart altogether from the ordinary judicial functions. If your Lordships refer to Section 28 of the Licensing Act of George IV., Section 27 is the appeal section, and Section 28 directs that when any person has appealed the Justices themselves shall summon before them and bind over to appear at the Quarter Sessions any person whom they think may inform the Quarter Sessions as to the matter to be called as a witness. It is a mere item in the matter as showing that Justices have other interests. They have to see that really the public are protected, and that the licenses should not be granted and appeals should not be successful unless it is, in their view, to the public interest.

That is all I have to trouble your Lordships with in this argument, except just to summarise what I have to say. What I have to say is this, the mere fact that Justices inform themselves beforehand of the nature and quality of the premises and the situation of the premises that it is suggested should continue to be licensed, provided nothing unfair is done, provided the licensee has an opportunity of meeting any matter which really weighs with the Justices, that is what they are entitled to do, they are entitled to go about their districts, and they are entitled to see what they are doing when they grant licenses and endeavour to see what the consequences are. Taking this as an illustration, here the Justice discovers the place to be a common lodging-house. It is brought before him, the matter is investi-

gated, and the thing is tried out, and the Justices hold (I am saying that they absolutely necessarily held) that a more improper thing could not exist. The next point is this, I contend, that the Justices, on the authorities and from the practice which has been established for many years, are entitled themselves to object. If they are entitled to object *cadit quaestio* as to whether they can hear the objection, because of course it would be little short of idiotic to say that Justices can summon the people before them to have the matter investigated, and then the Justices could not decide the question. Therefore, I do not think that if your Lordships hold that the Justices are entitled to object, under the circumstances of the particular case, I mean, you would say that they are not entitled to investigate the matter. I do not press it so far as to say that there may be no such case, but under the circumstances of this particular case at all events, if your Lordships hold that the Justices are entitled to do what they did, why *a fortiori* they must be entitled to investigate the matter when it comes before them. There is only one other question, and that is the case of Bentall.

The Lord Chief Justice: Your case is he never adjudicated on any one of these; no decision was given, and he retired.

Mr. Low: There are cases where a Justice has sat on the Bench—I do not think any of them would cover such a case as this, but if necessary I put it as high as this—there is nothing in the resolution to prevent him, nothing in the world—it is merely an expression of opinion that must have been held, one would have thought, by all sensible people.

The Lord Chief Justice: He says he has nothing to do with the people who have instructed counsel. We have read the affidavit.

Mr. Low: Nothing in the world to do with them. There is a case of The King and Fraser, where a man instructed a solicitor, and there is the case of Akkersdyk, the County Council case. There they were instrumental in instructing the

solicitor, and in that case a mandamus was granted, because in that case there was no appeal. That is all I have to say about the evidence in this case. There is only one more matter I wish to address myself to for the moment. I think your Lordships do understand that I do not in any way abandon the suggestion that I put before your Lordships that a mandamus is not a proper proceeding in this case at all. That, I think, is all I need trouble your Lordships with upon this matter.

Mr. Cyril Dodd: My Lords, I appear on behalf of Mr. Gould, whose position is this.

The Lord Chief Justice: Are you supporting the rule or showing cause against it?

Mr. Low: I ought to have said I have purposely refrained from dealing with Mr. Gould's affidavit. I did not consider it incumbent upon me.

Mr. Cyril Dodd: He has only one object in view, and that is to take care that the proper procedure, whatever it may be, should be laid down and be followed. Your Lordship will see the difficulty arises from the fact that it is not quite clear how far the Justices are to be regarded as a merely administrative body holding a public meeting, or how far they are to be regarded as something in the nature of a Court dealing with the matter absolutely judicially. That being so, all I have to do, if your Lordship will permit me, is to state Mr. Gould's view and leave the matter without argument, because to him it is immaterial which is the right procedure, so long as the right procedure is adopted. His view is that licensing meetings may properly be called an administrative tribunal, as they have been called in some cases, an expression which I notice that Mr. Justice Channell accepted in one of the cases. They have a double duty. They first of all have to see generally that taking the neighbourhood as a whole the licenses are not in excess of the requirements, dealing with it generally. Then they have to deal with the particular public houses which come before them.

His view was, whether it is right or wrong it is immaterial to him, that when the particular public houses were brought before them, when they had to deal with particular public houses, then they were bound to become judicial, and that where a particular public house was objected to, that a judicial discretion must be used, and that therefore, to put a case which does not occur here, and therefore which I can put without offending anyone, it would not have done for the Licensing Magistrate to have sent a policeman or a local clergyman to confirm his opinion as to how the public house was conducted behind the backs of the parties. Then he thought that with regard to the sitting on their own objections, that those ought to be sat upon only by those who did not actually take the objections; his view being, rightly or wrongly, that even in the case of a club, where there was a committee appointed to consider the question, say, of the conduct of a member of the club, that no one would have allowed the gentleman who raised the objection, say of cheating at cards, to sit on the committee to try it, and that it was against the ordinary principles of justice to allow persons to take an objection and themselves hear the case. They did in this case take the objections; therefore, he thought the safer plan was that the ordinary practice should be adopted, and that the Magistrates who took the objections would be wiser in retiring.

Mr. Justice Darling: I do not quite understand. Do you appear as *advocatus diaboli?*

Mr. Cyril Dodd: No; I appear for Mr. Gould. I am in a somewhat neutral position, because I am neither supporting the rule, nor am I showing cause.

The Lord Chief Justice: We should have been very glad to hear you, but now you have frankly told us you do not adopt on either position, I do not think we should hear you.

Mr. Cyril Dodd: I may mention my other point, and then sit down. The other difficulty was that the procedure is

regulated by an Act of Parliament, and that Act of Parliament says that they are not to receive any evidence. It may be the difficulty has not arisen, but the difficulty which occurred to my client was, that if they went round to the public-houses and saw even the wives or daughters, or the barmaids, they must be receiving some sort of evidence, and it would be a difficulty, and therefore he thought the safer plan was that they should not do it.

Mr. STIMSON: As my friend, Mr. Avory, is not here ——

The LORD CHIEF JUSTICE: We will hear Mr. Avory when he comes. We will hear two Counsel. You may begin, Mr. Stimson.

Mr. CYRIL DODD: The only case I ask your Lordships to look at is Evans *v.* Conway Justices, which is reported in 1900, 2 Queen's Bench, and I refer to pages 9 and 230.

The LORD CHIEF JUSTICE: We will look at it.

Mr. CYRIL DODD: Yes; I do not propose to argue upon it.

Mr. STIMSON: May it please your Lordships, I am with Mr. Avory in support of this rule, and with regard to the first objection that we have lost our remedy by mandamus, by giving the notice of appeal, your Lordships will see that that was absolutely necessary as a matter of precaution. Your Lordships may be aware that the notice of appeal must be given within a very few days after the announcement of the decision, and if we were to wait till the result of the mandamus was known, we should lose our remedy. My friend, Mr. Low, put it against us as a waiver.

The LORD CHIEF JUSTICE: We do not think that by giving notice of appeal you have lost your remedy here; but it is a matter we shall have to consider in connection with the discretion; issuing the writ.

Mr. STIMSON: My friend put it rather as a waiver. I submit we are entitled to a mandamus, of course on several grounds, unless our remedy by appeal is as full and ample as the remedy

we are at present seeking. Is it so? The reason we are here now is, we are complaining that the Court was improperly constituted on that occasion, and that is our main ground for complaint. If we appeal, that will not be open to us, because, as Mr. Low has said, the appeal is a re-hearing, and we should have to start *de novo*, and prove our case, and the Justices would not be concerned, and will not enquire into the question whether the Court of Petty Sessions or Licensing Meeting was or was not properly constituted. Therefore, the only means of testing that question is either applying for a prohibition, or, as in the present case, for a mandamus. There are several cases in which, notwithstanding that notice of appeal has been given, mandamus has been held to be the proper remedy. I may quote one, the Queen against Farquhar (I am not sure whether it is in the one we have heard of already) Law Reports 9, Queen's Bench. In that case notice of appeal had been given to the Quarter Sessions. There are several cases mentioned in Mr. Williams' work on Licensing, in which the same thing happened. I need not labour those authorities, but I submit there is ample authority to say that we are entitled to come here for a mandamus, notwithstanding that we have taken the very wise and precautionary measure of giving notice of appeal in case we should not be successful here to-day.

The Lord Chief Justice: The appeal had not been prosecuted in that case. I do not think it makes much difference, the principle is the same.

Mr. Stimson: No, it had not been prosecuted in that case, but the principle is the same. It was decided in that case, if it were so, that we lost our remedy by giving notice of appeal and entering into recognisances. Another case is The Queen *v.* Howard, 23 Queen's Bench Division, and *re* Brock, Law Reports, 5 Queen's Bench, page 33. The same, I think, was done in those two cases. In regard to the main question at issue in this case, I submit that the rule should be made absolute. The

proviso of Section 42 which Mr. Low read and commented upon is really the test of the whole case. Your Lordships will see that section says, "on objection being taken." It does not in terms say that the Justices themselves might take the objection. I submit I cannot do better than rely on the authority of The Queen *v.* Anglesea, where Mr. Justice Hawkins says: "It could not have been in the contemplation of the Legislature that Justices would or might be objectors under that sub-section, for the Justices are the only persons to whom an objection can be made; they are the only persons required to take action upon it, and they are the only persons who are to hear and determine it. In so doing they act judicially." It has been put against us that there are authorities against that, but Mr. Justice Hawkins dealt with those cases. The only cases I can find are The Queen *v.* Farquhar and also The Queen *v.* The Justices of Merthyr Tydfil, and Mr. Justice Hawkins disposed of those by saying, as I think I may very well say, they are not authorities to the contrary at all, though they were assumed to be authorities. I need not labour that because it is contended from what Mr. Justice Hawkins said that they were not authorities, and the only authority against that is the case of Baxter and Leche, which your Lordship has said is an authority, because that is a decision of the Divisional Court. It is very unfortunate that the case of The Queen and Anglesea was not cited in that case. Why it was we cannot say, but apparently it was not cited; there is no mention of it. There is a case of The Queen against the Justices of Anglesea, but that is not this case at all; it was tried some four years previously. I would distinguish that case.

The Lord Chief Justice: The Reporter has put it down as that case, but whether that is The Queen *v.* Anglesea which was cited is doubtful.

Mr. Stimson: There is another decision four years earlier upon another point.

The Lord Chief Justice: You are not following me. I say The Queen and Anglesea was cited in that case, and it does not quite clearly appear that the reference was the right one, if you look at what was said about it. It does not much matter; it was not referred to by Mr. Justice Wills.

Mr. Stimson: What strikes one, in reading the decision of Mr. Justice Wills, is that he would have commented in some respect upon the very important decision of Mr. Justice Hawkins if that authority had been before him; but he does not. There are several ways in which the case of Baxter *v.* Leche can be distinguished from The Queen *v.* Anglesea. What the Justices did in that case was to give notice of the adjourned meeting. They did not pretend in any way themselves to be objectors. They gave notice of the adjournment of the meeting, and then some third person appears to have come in, and himself objected. The Justices did not go anything like the length that is contended for in the present case. My submission is that even of the Justices can object, there ought to be a time when they cease to be objectors, and, to adopt Mr. Justice Hawkins' expression, they should not depart from one of the first principles of justice that no man can adjudicate upon his own case. We know what happens in Licensing Courts—objection is raised. To deal with the case which your Lordships put on the moving of the rule, it may be no one but the Justices will take the objection. The Superintendent of Police or any member of the public may not be inclined to take the objection, but the justices may, notwithstanding that, be convinced in their own minds that some objection should be taken. Therefore they say in Court: "We will object to license A, or license B, or to all the licenses, and, assuming they can do that, then I say, if they put themselves in the position of objectors, they should then dissociate themselves from the licensing justices; they should come off the bench, and come down and conduct the case as any other prosecutor would or should,

There must be a time when they make up their minds which they will do, when they will say either "We will be prosecutors," or "We will be judges;" and they cannot mix the two up together. That is the contention in the present case, and Mr. Justice Hawkins says that it would be departing from one of the very first principles of justice to mix up the two. In this case, of course, they objected to the whole, and that is apparently a fairer course than to pick out two or three particular licenses. What I submit is this, that if they ought not to be prosecutors and judges, it makes no difference in principle whether they object to a portion of the licenses within their jurisdiction or to the whole. In this particular case they take a portion of their jurisdiction, the district of Farnham Urban, and they object to all the ale-house licenses in that particular district; but I say in principle it can make no difference whether they object to one or two licenses in the district, or whether they object to the whole lot; the principle is the same, and they are objectors, and if they are objectors they ought not to be judges. I need not quote Sharp and Wakefield; every line almost of that is well known to all of us, particularly the judgments. The Lord Chancellor said in that case they must act judicially, and I submit they have not acted judicially in this case. Mr. Avory quoted, and relied upon strongly when he applied for the rule, the Akkersdyk case. Of course that was a County Council case; that was not a Court any more than the present Sessions; but it was held in that case that the judges who had gone certainly beyond what the justices did in the present case—the County Council, I mean ——

The Lord Chief Justice: Which report are you referring to?

Mr. Hohler: 1892, 1 Queen's Bench.

Mr. Stimson: There three members of a body who were afterwards to act as judges put themselves very much in the position of the Licensing Justices in the present case. They went round

and appear to have taken evidence, and they went a step further—they instructed counsel to appear and actively oppose the licenses; but I submit there is in truth very little distinction between the two—the fact of their putting themselves in the position of objectors is the point. The fact that they instructed counsel is only evincing their determination to appear as prosecutors. The judgment on page 198 is this: "In our judgment, if members of a body such as the London County Council, consisting as it does of 139 persons, and sitting in a building like that at Spring Gardens, desire to retain counsel on their behalf to press accusations against applicants for licenses, or others, before the Council, they should either absent themselves altogether from the precincts of the building or sit in such a position, with their counsel, that it may be known to all as to who the real accusers are, and that they do not 'leave the bench' if they remain in the position the three councillors did upon this occasion." In a certain sense ours is a much stronger case than that, because the gentlemen, we say, who are prosecutors in this case actually sat upon the Bench and adjudicated. It is perfectly clear upon the affidavits as to what took place with regard to the objections to the licenses which the Justices alone had made. Mr. Low has stated the nine refusals—in six cases there was an independent objector, but in three the Justices themselves were the only objectors. What happened, as stated in that part of our affidavit, is not disputed. It is alleged in the affidavit by the applicants that in cases where the Justices were the only objectors they examined the witnesses, and re-examined them after cross-examination. My friend does not attempt to meet that in his affidavit, and say that it did not take place. Those of us who were there know what took place. The application had not gone on very far before a case came where the Justices were the only objectors. What was to be done? Thereupon the Chairman called for a witness. He happened to be the superintendent of police. He

called for another witness, and when it was discovered that the applicants themselves did not tender themselves as witnesses, the Chairman called upon them to come into the box and give evidence as to what they knew of the state of the buildings and other matters connected therewith. I submit that that was clearly acting as prosecutors within the meaning of the decision of The Queen *v.* The London County Council *ex parte* Akkersdyk. What could they do more than that? They had themselves, as we know from the affidavits, settled the form of the objection. They passed a recommendation or resolution, which we could not get at then, that their Clerk was instructed to procure police and other evidence to support their objections. They themselves, while they were sitting on the Bench, in furtherance of their own objections, called upon witnesses to come into the box and give evidence. I do submit that is putting themselves in the double position of prosecutors and objectors.

Mr. Justice Darling: Then when they called the applicant—

Mr. Stimson: They examined him, and my friend, Mr. Avory, suggested in one case that they should cross-examine a witness, and they did.

Mr. Justice Darling: They called the applicant himself. If they had made up their minds to refuse the license, and only wanted to go into the case for the prosecution or opposition, why call the applicant?

Mr. Stimson: Because they could not get the evidence they wanted otherwise. They wanted evidence as to the takings of the house, and other matters only in the knowledge of the applicant, and they called the applicant for their own purposes.

Mr. Justice Darling: If they called the man who wanted the licenses, they could not have had much assurance that they could prove the case for the opposition out of his mouth.

Mr. Stimson: They were not hampered by not being allowed to put leading questions. They put what questions they liked.

The LORD CHIEF JUSTICE: It never hampered you, I am sure.

Mr. LOW: The second affidavit of the Chairman deals with this point. I did not read it.

The LORD CHIEF JUSTICE: Yes; we noticed it.

Mr. STIMSON: My Lords, upon those grounds I submit that the rule should be made absolute.

Mr. HORACE AVORY: My Lords, I submit that the substantial question which arises for decision in this case is whether Justices who have themselves given a notice of opposition to the renewal of a license, who have themselves collected evidence in support of the opposition to the renewal, and who have identified themselves at the hearing with the opposition to the renewal, can adjudicate in such a case. That is the substantial question which arises here, and that being the question it is *nihil ad rem* to discuss whether they were in fact biassed by anything that took place, or whether they were in fact actuated by any but the best motives. I will assume for the purpose of this argument that they were actuated in this case by the very best motives. Take the statement which they make on affidavit that they were not in fact biassed or influenced by anything that had taken place beforehand, but the cases have decided that that is not relevant. It is not relevant to enquire whether they were in fact biassed, or whether their motives were good or otherwise. The cases have all decided, as I think I can show your Lordships, that the question is—Are the circumstances such as to give rise to a reasonable suspicion that they might have been biassed? because, as has been said by many great authorities, the importance is not so much that abstract justice should be done, as that there should be no suspicion of its being unfairly done. I want to point this out in this particular case to your Lordships: the more absolute, the more unqualified, the discretion which it is held that Justices have in these licensing matters, the more necessary is it to apply to their proceedings the principles which have been laid down as regu-

lating the exercise of the judicial function, the more necessary is it to be particular that they shall not be biassed beforehand, or influenced by identifying themselves with one side or the other. It has been admitted, I think, that until the case of the Anglesey Justices, and the decision of Mr. Justice Hawkins, this question has never been discussed in any of the cases as to the right or power of the Justices, who have themselves given the notice of opposition, to sit and adjudicate, and I want, if I may, to remind your Lordships of the principles which will apply to such a case, and for this purpose I am going to cite only the cases which apply to Justices who are not sitting in a strictly judicial capacity in a Court, the cases which apply to Justices who are exercising administrative functions, but, as has been said, discharging a quasi judicial duty. The case which lays down the principles most clearly is the case of Leeson *v.* The General Medical Council, in 43 Chancery Division, p. 366. In that case the General Medical Council held an enquiry into the conduct of a medical man. The proceedings were instituted by the managing body or Committee of the Medical Defence Union, and two out of the persons who sat upon the enquiry were members of the Medical Defence Union, but not of the managing body that had instituted the proceedings. Upon this fact it was held by Lord Justices Cotton and Bowen that those two members had not such an interest as to disqualify them. Lord Justice Fry held that they had; that the mere fact of their being members of the Medical Defence Union was sufficient to disqualify them, and the only ground on which the other Lords Justices differed from that view was that they were not members of the body who had in fact instituted or had anything to do with carrying on the proceeding. This is what Lord Justice Cotton said upon this point, page 379: "Of course the rule is very plain that no man can be plaintiff, or prosecutor, in any action, and at the same time sit in judgment to decide that particular case—either in his own

case, or in any case, where he brings forward the accusation or complaint on which the order is made. To my mind it is clear here that the General Medical Council, in respect of the complaint against Dr. Leeson, were acting judicially. They were not in the ordinary sense judges, but they had to decide judicially whether or not the complaint against Dr. Leeson was well founded; and they could, if they found it well founded, make an order which would be of great importance to him and remove him from the register, with very serious consequences. But then we have to consider this. Ought these two gentlemen —Mr. Teale and Dr. Glover—to be considered as complainants in this case?" Then the learned Lord Justice goes on to observe upon the articles and constitution of the Medical Defence Union, and on page 380 says: "Now this complaint made against Dr. Leeson was a complaint brought forward by the Council, to which neither of these two members of the General Medical Council belonged. They were not upon it, and they could not, having regard to the articles, exercise any control or give any direction as to what should be done by the Council bringing forward this complaint. Then, are they, as members, in any way interested? The expenses of this complaint could not be thrown by the General Medical Council on Dr. Leeson, the person complained of. They had no power to give any costs, and therefore, whatever might be the result of this complaint made against him, it could not in any way affect the liability of Mr. Teale and Dr. Glover to contribute to the expenses of this proceeding. Then as regards the question whether they are to be considered as complainants here, we ought to look to substance, and not, because this complaint is brought by the Council in the name of the Union, to say that a person, a member of a Union, who has nothing to do and can have nothing to do with bringing forward this complaint, is to be treated as a prosecutor or as one of the persons who is bringing forward this complaint. The term 'prosecutor' is

sometimes objected to, but I use it for the sake of simplicity. Therefore it cannot be said that these two members were incompetent to act because they were adjudicating upon a complaint brought forward by themselves." Lord Justice Bowen says this, page 384; "Next comes a very serious question, whether or no the tribunal which adjudicated in respect of the Appellant's conduct was, in respect of its two members, rendered incompetent by the fact that they had taken part as accusers before the Council of the person upon whose conduct they were adjudicating. As the Lord Justice has said, nothing can be clearer than the principle of law that a person who has a judicial duty to perform disqualifies himself for performing it if he has a pecuniary interest in the decision which he is about to give, or a bias which renders him other than an impartial judge. If he is an accuser, he must not be a judge. Where such pecuniary interest exists, the law does not allow any further enquiry as to whether or not the mind was actually biassed by the pecuniary interest. The fact is established from which the inference is drawn that he is interested in the decision, and he cannot act as a judge. But it must be in all cases a question of substance and of fact whether one of the judges has in truth also been an accuser. The question which has to be answered by the tribunal which has to decide—the legal tribunal before which the controversy is waged—must be: Has the judge whose impartiality is impugned taken any part whatever in the prosecution, either by himself or by his agents? I think it is to be regretted that these two gentlemen, as soon as they found that the person who was accused was a person against whom a complaint was being alleged by the Council of a society to which they subscribed, and to which they in law belonged as members, did not retire at once from the Council." Then he says: "It appears to me, in spite of the cloud which the ingenuity of the Appellant's counsel raised upon the point, that the true answer must be here upon the facts—and it is a ques-

tion of fact—in the negative. I think, although they were members of the incorporation whose Council brought this complaint before the General Medical Council, they did not themselves take any part, and could not have taken any part, whatever in the prosecution." Lord Justice Fry came to the opposite conclusion on the question of fact, and after referring to the case of Allan and citing from the judgment of Lord Chief Justice Cockburn, he says: "I think that it is a matter of public policy that, so far as is possible, judicial proceedings shall not only be free from actual bias or prejudice of the judges, but that they shall be free from the suspicion of bias or prejudice; and I do not think that subscribers to associations for the purpose of carrying on prosecutions can be said to be free from suspicion of bias or prejudice in the case of prosecutions instituted by the associations to which they subscribe. It is needless for me to disclaim any intention in arriving at that conclusion, of holding that the two gentlemen in question were in fact influenced by any bias. That appears to me a point which is not really open to us, because I put my decision on the ground of public policy, and I disclaim any right to enquire whether in fact they were or they were not biassed."

Mr. Justice Darling: I do not think you were in Court; but are you aware of the decision of Sir Edward Fry at Licensing Sessions, which was read to us by Mr. Low?

Mr. Horace Avory: I have heard of it, but not in the nature of a report.

Mr. Justice Darling: Mr. Low read it to us; and the same Judge who said all that you have told us held that these objections might be made by justices.

The Lord Chief Justice: I do not want to interrupt you; but I think the distinction, if it be a distinction, is, there they were speaking of persons who were undoubtedly parties. It is very doubtful, to say the least, after the judgment of Lord

Herschell in the House of Lords, whether you are right in speaking of an objector as a party. That seems to me to be a distinction that may be taken.

Mr. Horace Avory: Is not the answer to that, that in the House of Lords they were merely dealing with the question of whether the objector was a party within the meaning of the Summary Jurisdiction Act, and the particular section of the Summary Jurisdiction Act which gives the right of appeal, and which says that the Justices may order either party to pay costs?

The Lord Chief Justice: I ought not to interrupt you, because my brother, Darling, calls your attention to the very cogent reasoning of Sir Edward Fry. It is only reasoning, and nothing more.

Mr. Horace Avory: This decision of Sir Edward Fry, sitting at Quarter Sessions, apparently only goes to the extent that the mere fact of their having given notice of objection does not disqualify them.

The Lord Chief Justice: Quite right.

Mr. Horace Avory: That is all the point he dealt with. He never professed there to deal with, and apparently did not have present to his mind, any such question as the one in the present case of where the Justice, having given notice of objection in Court, follows that up by a notice of opposition under the Act of Parliament, specifying the grounds, and follows that up by collecting evidence in support of that opposition.

Mr. Justice Darling: Do you agree that he was right there?

Mr. Horace Avory: No. All I am saying is that it is not necessary for me to say that it was wrong for the purpose of my argument to-day.

Mr. Justice Darling: No.

Mr. Horace Avory: Because there is all the difference in the world, I am going to suggest to your Lordships, between a Justice getting up in Court on an annual licensing day, and

saying, "I object to that license; let it be adjourned," and his doing what was done in this case. If he does anything more than that I should have said, but for this decision of Sir Edward Fry, that he was disqualified from sitting; but the case is a totally different one when, having given that notice of objection in open Court, he follows it up by serving the document, which I say the Statute contemplates is to be served by some third party. Even if the Statute contemplates that the Justice may object in open Court, it clearly contemplates that the notice of opposition is to be served by some third person.

Mr. Justice Channell: If there is no third person who will do it, the Justice's objection in open Court fails. It cannot be gone on with on the next occasion, can it, unless notice of the grounds has been given?

Mr. Horace Avory: That is a question under this section.

Mr. Justice Channell: I should think it would be worse practically if, instead of doing it himself, he put somebody else up to do it. If he has objected in the first instance, and nobody else agrees with him, his objection goes.

Mr. Horace Avory: My Lord, the words of the section are (and this is another objection which may arise under this section): "Provided that Justices may, on an objection being made, adjourn the grant to a future day, when the cause will be heard and the objection considered as if the notice hereinbefore prescribed had been given." So that apparently in such a case as that, it may fairly be said that they may dispense with the notice of opposition—they are to hear the case as if notice had been given. The section clearly contemplates, whatever it means about the objection being made, that the notice of opposition is to be a notice given by some third person.

Mr. Justice Channell: Does not the 26th Section and the Sub-section of the Act show that he must state the grounds?

Mr. Low: Yes, my Lord, that is so.

Mr. Horace Avory: Yes.

Mr. Low: "State in general terms the grounds."

Mr. Horace Avory: No doubt it does; but the amending Act does not imply ——

Mr. Justice Channell: I may just illustrate it in this way: Supposing the Justice in Court had said, "I do not want to object to this license, but I think it is a case in which the man ought to come forward and prove his case. I think there is sufficient doubt, and he ought to come before the Bench, so that we may consider it, and for that purpose, and that purpose only, I give notice of objection." That is good, I should think. Then must not he follow it up, in order that it may be heard, by stating the grounds, and getting somehow or another service of the notice of the grounds? If he expressly states that is his only object, you hardly seem to think that would be wrong.

Mr. Horace Avory: I was going to say, before I answer that question, I think that would be entirely wrong, for this reason, that that assumes that at the renewal the Justices may call upon the applicant to establish a case for a renewal. I say that is utterly wrong.

Mr. Justice Channell: Sharp and Wakefield says that it is absolutely discretionary whether they will do so or not.

Mr. Horace Avory: But it also says that they are to be renewed, and the statute assumes that they will be renewed, unless a case is made out for an opposition, and it has been expressly held since Sharp and Wakefield that the burden of proof is upon the opposition. Your Lordship remembers the case—the case of Conway?

Mr. Justice Channell: Yes.

Mr. Horace Avory: Unless the affirmative case is made out for the opposition, the license must be renewed.

Mr. Justice Channell: That does not at all affect the point I was making. I will alter the proposition. Suppose the Justice comes and says, "I think this is a thing that ought to be enquired into. I will not say that he ought to prove his

case; but I want to ask him some questions. I think there will probably be found sufficient ground for objection." If he does it simply for that purpose, he must, if Sharp and Wakefield is right, have a discretion, and this 42nd section puts a difficulty in the way of machinery in exercising that discretion. There must be some way in which it can be got over, must not there?

Mr. Horace Avory: I still take exception to that case which you put, because I say that a justice has no right to say, "I want this case enquired into," unless there is some objection made. Until there is an objection made the statute assumes that the license will be renewed, and I say, there is nothing in Sharp and Wakefield to justify the justices in saying "every applicant for a renewal must come here and satisfy us that he has a good case for the renewal of his license." If that were so, if that were the meaning of the Act, what could be the explanation of the provision that he need not attend even, unless he has notice for some cause personal to himself? As was said in Sharp and Wakefield, that means some cause personal to himself as distinguished from the rest of the publicans in the district. Here, in this case, the only cause given requiring these people to attend, was as to each of them, that the public-houses were not wanted, that there were no public-houses wanted, in fact, in Farnham. That was not a case peculiar to any one man. The Justices gave notice to every one of the publicans: "Your house is not wanted in Farnham." I say that was not a case personal to the man, to start with. But what is the meaning for requiring a notice for some cause personal to the man to attend, if there is any jurisdiction to refuse the renewal in the absence of an objection to the renewal? It does not say that the thing may be adjourned upon the Justices requiring the attendance of the applicant; they cannot adjourn merely because they want to see him, they cannot adjourn it merely because they want to put some questions to him; they can only adjourn on an objection being

made. The Kingston case, which your Lordships heard recently, I submit, was a decision strictly in point in answer to this part of the case. The Justices there had refused the renewal; the Justices had adjourned the case because they wanted to refuse the renewal. Your Lordship said, if it should turn out that there were no objection made at that annual meeting, then they must grant the license. If there was any objection made, then they had authority to adjourn it, and they can adjudicate upon that objection, but it was a definite decision that unless there was an objection made they must grant the license.

Mr. Justice Darling: We did not say by whom.

Mr. Justice Channell: Personally, so far as I am concerned I mean this thing you are now speaking to.

Mr. Horace Avory: I am not saying it was a decision on the other point at all.

Mr. Justice Channell: I call it an objection. I differ from you as to the meaning of the word.

Mr. Horace Avory: I submit it has a meaning beyond what your Lordship has in your mind at the moment. "An objection made" must mean something more than unwillingness on the part of the Justices to grant a renewal.

Mr. Justice Channell: To grant a renewal without certain matters being cleared up to his satisfaction. I call that an objection. I do not see why under the Statute we should not call it an objection.

Mr. Horace Avory: Because I say the latter words show that the objection will then be considered as if the notice thereinbefore prescribed had been given. That throws you back as to what is the kind of objection contemplated by the Act. The Act therefore in the second part of the section clearly contemplated the same kind of objection as is contemplated in the earlier part, namely, where it says the Justices shall not entertain any objection unless written notice of an intention to

oppose the renewal has been served. That clearly means an objection by somebody who has some grounds to give for his objection. I just wanted to finish upon this principle which I have cited. It was followed, as your Lordships know, by another case, of Allison and The General Medical Council, in the Court of Appeal, 1894, 1 Queen's Bench Division, page 750. Here the late Lord Esher and Lord Justice Lopes and Lord Justice Davey gave judgment, and they, as appears from the judgment, were rather disposed to follow what Lord Justice Fry had said in the previous case. Lord Esher said: "We are bound to act upon the decision of this Court in Leeson *v.* General Council of Medical Education and Registration. It may be that some of us (I am not one) would have preferred that that case should have been decided according to the view of Lord Justice Fry; but we are bound by the decision, and all we have to do with that case is to discover rightly what it did decide, and whether the decision embraces the present case." He goes on, "Leeson's case also decides that there are other relations to the matter of a person who is to be one of the judges which may incapacitate him from acting as a judge, and they held that the crucial question is, as Lord Justice Bowen said, whether in substance and in fact one of the judges has in truth also been an accuser. What is the meaning of that? The question is to be one of substance and fact in the particular case. What is the fact which has to be decided? If his relation is such that by no possibility he can be biassed, then it seems clear that there is no objection to his acting. The question is not whether in fact he was or was not biassed. The Court cannot inquire into that. There is something between these two propositions. In the administration of justice, whether by a recognised legal Court or by persons who, although not a legal public Court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in

it should not be in such a position that he might be suspected of being biassed. To use the language of Mr. Justice Mellor in Regina *v.* Allan, 'It is highly desirable that justice should be administered by persons who cannot be suspected of improper motives.' I think that if you take that phrase literally it is somewhat too large, because I know of no case in which a man cannot be suspected. There are some people whose minds are so perverse that they will suspect without any ground whatever. The question of incapacity is to be one 'of substance and fact,' and therefore it seems to me that the man's position must be such as that in substance and fact he cannot be suspected. Not that any perversely minded person cannot suspect him, but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biassed. I think that for the sake of the character of the administration of justice we ought to go as far as that, but I think we ought not to go any further. I take that to be the rule for the application of the test laid down in Leeson's Case." Then he proceeds to discuss the position of the particular gentleman who was objected to here, that he had been a subscriber and a member of the Society, but had resigned his membership before this question ever arose, and therefore on that ground held that he was not disqualified. Lord Justice Davey said: "Speaking for myself, if I were at liberty to discuss the judgments of the Lords Justices in Leeson's Case, I confess that my mind would go rather with the judgment of Lord Justice Fry." Then he says, for the same reasons, that he thinks in that case there was no ground for suggesting that a gentleman who had been once a member of a society which was interested in the prosecution was thereby disqualified. This principle has been further illustrated in the Irish Courts and in the Irish Court of Appeal in a licensing case. I only cite it because it is a licensing case, and therefore strictly, I submit, applicable. It is a case where the Bench had advantage of having as one of its members Lord

Macnaghten sitting on the Bench who decided this question. It is in 1891 Irish Reports, 2 Queen's Bench Division, page 123.

The LORD CHIEF JUSTICE: What was the Court?

Mr. HORACE AVORY: It first of all went before the Queen's Bench Division in Ireland, then to the Court of Appeal, Lords Justices Walker, Holmes, and Fitzgibbon.

The LORD CHIEF JUSTICE: You said Lord Macnaghten was there.

Mr. HORACE AVORY: Lord Macnaghten sat as a magistrate. Your Lordship will see why I state it, because under his guidance the magistrates took the course which I say the justices ought to have taken in this case, namely, decided that the gentleman who had acquired information of the facts relating to the particular case should go into the witness box, and not sit and adjudicate upon the matter as to which they had acquired private information. This was an application for a certificate of good character so as to enable a man to hold a grocer's spirit license, the Irish Acts requiring that he should get a certificate of good character from the justices. The point that arose for discussion was whether the justices could refuse that when there was no objection by the police. Upon the hearing before the justices it turned out that two of them had personal information about the character of the applicant, and they immediately, upon this being discovered, left the bench, went into the witness box, gave evidence, and were cross-examined upon it, and this is what the Chief Justice, Sir Patrick O'Brien, said on the subject in giving the judgment, page 141. The objection was taken afterwards that the justices were improperly influenced by two of their brethren giving evidence before them. That was one of the objections taken.

The LORD CHIEF JUSTICE: They must not sit on the bench, and if they come off the bench and give evidence they are objected to.

Mr. Horace Avory: That was the objection; but the Court said they did quite right—that is what they ought to do. The Lord Chief Justice said, "On their return to Court all the magistrates, save two, took their seats on the bench. Dr. Traill and Mr. Steen proceeded to the body of the Court; the Chairman asked, did anyone wish to give evidence; Dr. Traill came forward and was sworn, and gave evidence as to the insobriety of the applicant; so also did Mr. Steen. A gentleman named Douglas, a magistrate of many years' standing, who happened to be in Court, and who lived within a couple of yards of the applicant's house, and who was naturally best qualified to speak as to the applicant's character, came forward at the suggestion of the Bench, and on examination stated that M'Kenny was not a person of sober habits. Under these circumstances the magistrates unanimously refused the certificate. Neither Dr. Traill nor Mr. Steen took any part in the decision, nor did they occupy seats on the Bench after the magistrates returned into Court. Mr. M'Laughlin, who was a solicitor representing the applicant, declined examining Dr. Traill or Mr. Steen, on the ground that it was not fair or competent for a magistrate to retire from the Bench while a case was pending, and to give evidence openly and upon oath upon the matter before the Court. We are all of opinion that there was nothing whatever in this objection of Mr. M'Laughlin. It was quite competent for a magistrate to retire from the Bench and give evidence in a case—he, of course, taking no further part in the decision. In fact, if a magistrate was in the exclusive possession of relevant facts, it was not only fair to retire from the Bench and to give evidence, but it was his bounden duty to do so. This is quite an elementary matter." After quoting from the affidavit of Sir Francis and Lord Macnaghten, he says it is stated that they quite agreed "That it was impossible for the magistrates as a body, or individually, to act upon private information or personal knowledge. They stated that they would, therefore,

leave the Bench and offer themselves for examination in open Court. They accordingly did so, were examined like other witnesses in open Court, and upon oath, and took no part in the determination of the case. That this course was correct is, as I have already stated, quite an elementary matter." The other Judges gave judgment to the same effect on that point. On page 156 Mr. Justice Gibson says, "The magistrates seem to have acted with perfect propriety. The two gentlemen who were cognizant of the facts left the Bench, gave evidence as witnesses, and took no part in the decision, which was founded on evidence, and not on any previous knowledge or information." Those opinions are I submit quite inconsistent with this opinion which has been expressed by Lord Justice Fry, in the licensing case, that justices who themselves give notice of objection can sit and adjudicate. As I have said before, I am not limiting my objection in this case to that, it is not merely that they gave notice of objection, it is not merely that they, as has been suggested, stated in open Court, "We think this matter ought to be further enquired into, and therefore we give a notice of objection to it"—this case goes very much further. In this case they, I submit, make themselves parties, because they instruct their Clerk to give the notice of opposition contemplated by sub-section 2 of section 42, the notice of opposition, and the ground of the opposition to it, and they proceed either before they have given that notice or after they have given it—both, in fact, because before they gave that notice they had been collecting evidence in support of some objections of this kind, and after they gave their notice they instructed their Clerk to procure the necessary evidence in support of it.

The Lord Chief Justice: I do not want to object to the mere form of the phrase, because I know what you mean, but I do not think it is quite to be taken that what they have done before is collecting evidence. If you say "collecting information," I

should agree. I think it is not evidence on the information before us.

Mr. Horace Avory: I accept the amendment at once—collecting information. But what is the information they are collecting, and for what purpose? It must be taken in the light of their subsequent conduct that they were collecting information for the purpose of framing objections or starting opposition to the renewal of some of these licenses, and it is difficult in this case, of course, to say what is the meaning of the attitude of the Justices when they in fact give notice of opposition to the renewal of the license of every house in the place.

Mr. Justice Channell: That is just what enables one to see what it is, is not it?

Mr. Horace Avory: No.

Mr. Justice Channell: I should have thought it was quite clear that they had come to the conclusion (and perhaps you will say had no business to come to the conclusion until they had got into Court), but they had come to the conclusion that the licenses in the district were too many, and that they must be reduced, and that supposing they are to be reduced by nine or ten or what not, they ought to select the nine or ten which had the weakest case for renewal, as to which there was most objections, and they were finding whether or not they could see which should be objected to. They ultimately decided the best course is to object to everybody, and objecting to everybody we shall find out which are the nine or ten which have the least claim to be renewed.

Mr. Horace Avory: I quite understand.

The Lord Chief Justice: "And we will not decide till we hear the whole of the cases." The case of one house would not deal with the question of there being too many for the neighbourhood.

Mr. Horace Avory: I quite agree that is the way in which they themselves put their case, and it is the most favourable

way in which it can be put for them; but I say it is all wrong, putting it even in the most favourable way. I say it is all wrong for these reasons. This is the test. What confidence could anyone have in the determination of a tribunal who are sitting to renew licenses when it is admitted that they have come there with a determination beforehand to reduce the number by nine or ten at least? What is the use of asking anybody to believe that Justices have impartially and judicially considered the case of each license when they start with a predetermination to refuse at least nine or ten?

The LORD CHIEF JUSTICE: I think you are pressing it a little hardly, as we stated it to you for your consideration; but even taking that, do you really mean to say Justices may not consider that there are too many licenses in a town?

Mr. HORACE AVORY: When an objection is made.

The LORD CHIEF JUSTICE: How can an objection in that sense be made? An objection cannot be made to A, B, C and D because there are too many; but there is a broader question than that which they had to consider—whether, taking the whole as a lot, there are too many.

Mr. HORACE AVORY: They having a right of renewal. Of course they have the most absolute right to consider that when an application is made for a new license.

Mr. JUSTICE DARLING: If you get the population of a place falling away, you get a lot of public houses, and it is obvious that in time the houses would become far too many for the people, and you say unless somebody comes before the Justices and points that out as against one particular person they may never reduce the number.

Mr. HORACE AVORY: That is what the Act says.

The LORD CHIEF JUSTICE: I do not want to mention places, because it is invidious, but I know of places in which a population of 15,000 or 20,000 has gone down to 5,000, and the number of public houses has practically not diminished at all, so much

so, that there is one public house to a very small number of other houses. Do you really say the magistrates in that case, unless a person can put his finger on a particular house and say, "This must go, because there are too many," have no jurisdiction.

Mr. HORACE AVORY: I do. I am sure your Lordships will go with me.

The LORD CHIEF JUSTICE: I only want your help on this point.

Mr. HORACE AVORY: You must look at the other side of the question also. It appears right that they should do it in a case where it is suggested that the population has fallen off; can they do it in a case where the population has increased?

The LORD CHIEF JUSTICE: Certainly.

Mr. HORACE AVORY: Can a body of Justices in a particular place who happen to have personal views of their own that one public house is enough for 10,000 people, go in that particular place and say, "We will not have more; we will only have one for 10,000 inhabitants"?

Mr. JUSTICE CHANNELL: With that large number of inhabitants you will have a large number of Justices, and with a large number of Justices you will not have many of those gentlemen.

Mr. HORACE AVORY: It might happen. You cannot say it is impossible.

The LORD CHIEF JUSTICE: You are quite right. It is a perfectly fair case.

Mr. HORACE AVORY: It might happen you would have a body of Justices in some particular place who were of opinion that it was not necessary at all to have one.

Mr. JUSTICE DARLING: You are putting a case of granting new licenses.

Mr. HORACE AVORY: No, I am putting the case of the old ones. A body of Justices might happen to hold the view that

no public house was necessary at all, and refuse the renewal of them all. That is the proposition of the other side, apparently, that they, holding that view, might come and hold their meeting. One of them gets up and says, "I object to everything, to all licenses." Notice is served in the terms that you are not wanted on every license holder, and the Justices say, "We refuse every renewal."

Mr. Justice Darling: There are few laws—perhaps none—which, administered by prejudiced people, could not be made to work injustice.

Mr. Horace Avory: I am submitting these are rules which ought to be applied to prevent the possibility of such a case as that arising. The case we are dealing with is a case midway between two extremes.

Mr. Justice Darling: If it did arise, the proper thing would be to apply to the Lord Chancellor to appoint a lot of sensible persons to be Justices in that district.

Mr. Horace Avory: That might be a remedy.

Mr. Justice Darling: You say it might be that there would be no reasonable people there.

The Lord Chief Justice: You say it is not an alternative remedy.

Mr. Horace Avory: No, and it is not an equally effective one to the mandamus. I submit that the attitude of the Justices cannot be supported unless your Lordships are prepared to hold that the Justices have, without any objection being taken by anybody, discretion and power to shut up all the public-houses in their district, and I say that never was contemplated by the Legislature, and never contemplated by Sharp and Wakefield at all. The very words of Section 42 contemplate, as has been said more than once, that there will be a renewal of the licenses unless somebody comes forward with some reason why that particular house should not be renewed.

Even if it be good law that the Justices, or any one Justice, may get up in Court, and say: "I object," what practical difficulty is there in following out the principle of these cases, and the Justice then retiring from the bench, and not sitting upon it. If he likes to go further, and make himself an opponent by serving a notice of opposition *a fortiori*, should the Justices retire and not sit to adjudicate because, as these cases have pointed out, the Court will not enquire, and were not allowed to enquire to what extent, if any, justice has been biassed or influenced by his adopting this attitude of opposition, or by anything that he might have heard outside the Court. I submit this to your Lordships for consideration. Could any ordinary members of the public, knowing that the Justices were the persons who had given notice that they would oppose the renewal of those licenses, that the Justices had been to the house, and in the course of conversation with a landlady, perhaps expressed their disapproval of four men sleeping in one room, or something of that kind, could the public have any confidence, or could they be free of suspicion that these Justices were biassed against that particular house before they came into Court? Surely such circumstances are circumstances which do give rise to a reasonable suspicion of bias. Take this very case that we are investigating, the Queen Street Tavern. It is said that in this case the only particulars that occur in the report are particulars which were afterwards confirmed in evidence. But just observe what one of them is—one of the statements about this house is, "Two bedrooms for seven lodgers." Why was it put down? It could only have been put down because it amounted to an expression of opinion on the part of the Justices who visited the house, that two bedrooms were not enough for seven lodgers.

The LORD CHIEF JUSTICE: Surely not. The facts there were, that there were two bedrooms in which seven people were accommodated.

Mr. Horace Avory: What would any one understand by this being recorded? Surely any one would understand by its being recorded that it means the accommodation was not sufficient.

Mr. Justice Darling: Suppose they put down two stalls for seven horses. Would that mean that each horse ought to have one stall?

Mr. Horace Avory: Certainly not.

The Lord Chief Justice: It brings out the fact that it is an inn which takes lodgers in.

Mr. Horace Avory: Either it is an objection to it, or it is not.

The Lord Chief Justice: I do not think it is either, by itself.

Mr. Horace Avory: It surely was meant to be an objection of some kind.

The Lord Chief Justice: I think it is meant to be information.

Mr. Justice Channell: Yes, but information in the nature of an objection to this extent, I think—it was meant to be a statement of a matter which the Justices might think made that particular house one of those that had better not be renewed. I think it is that. That is done in reference to all the houses, and if it is intended to be not acted upon without enquiry and without ascertaining that those facts are true, what is the substantial objection to it? Here is a statement, first of all, of the number and the names and so on; a convenient thing for the Justices to use, as I said, as a sort of cause list to go through these things. If it never was intended for one moment that they should rely on these particulars as being accurate, but as things which they might inquire into, there is no real harm.

Mr. Horace Avory: Yes, I say the harm comes in which has been pointed out in this case; you must not inquire whether in fact they were biassed by it, you must not inquire whether those facts were afterwards proved in evidence. The moment you

have it that information is collected not upon oath by persons who are going to decide on facts which may influence their judgment, then you bring them within these cases of persons who are biassed.

Mr. JUSTICE CHANNELL: You are speaking of the people who made out this list, are you?

Mr. HORACE AVORY: Yes.

Mr. JUSTICE CHANNELL: I beg your pardon; I was speaking of the people before whom it was put.

Mr. HORACE AVORY: I follow. I am speaking rather for the moment of those who actually went round and collected the information, I call it evidence, which they embodied in the report. That is undoubtedly evidence of facts relating to the house, and evidence which is not taken on oath. To adopt that illustration which your Lordship is putting of the cause list, supposing for a moment that a calendar of the prisoners at the Assizes—one of those calendars as to which I have always doubted whether they even ought to be put before a Judge——

Mr. JUSTICE DARLING: How do you know they are?

Mr. HORACE AVORY: I never profess not to know a thing in Court which I know quite well out of Court. Supposing one of those calendars was put before a jury, could there be a doubt that the trial would be vitiated? Supposing a jury saw a calendar containing uncomplimentary remarks about a prisoner, could there be a doubt that that would upset the trial?

Mr. JUSTICE CHANNELL: Does it or does it not upset the case that the Judge has got it?

Mr. HORACE AVORY: The Judge, of course, is not trying.

Mr. JUSTICE CHANNELL: He is part of the Court that is trying.

Mr. HORACE AVORY: When that question arises, I am prepared to discuss it.

Mr. JUSTICE CHANNELL: I have often thought it is a matter of some difficulty, but it generally enables the Judge in fact to

assist the prisoner, because he knows that beforehand; otherwise inadvertently things about previous convictions might come out.

Mr. Horace Avory: Quite.

The Lord Chief Justice: It enables him to be on the watch to see that counsel does not ask improper questions.

Mr. Horace Avory: That is the one thing that is to be said in its favour.

The Lord Chief Justice: I am glad you have a little confidence left in the Judges.

Mr. Horace Avory: My Lord, I have never taken this objection myself, so that is the best evidence of it. Supposing a jury in an ordinary compensation case were taken to view, and it were proved that they had entered into conversation with the claimant, who had told them privately, "Well, you know, I am doing a rare good business here. I shall not be able to produce my books, but I can assure you I have been making £300 a week here all the time I have been here." That would be quite sufficient to upset the verdict of the jury, and care is supposed to be taken.

Mr. Justice Channell: I rather wonder that there are not more upset.

Mr. Horace Avory: It is only because you cannot get at the proof of these facts. You may know things and you cannot prove them, but when you once can, then the question has to be decided. In this case we are dealing with now we have got at the facts, and is not it just the same thing as a jury who have to decide a fact having before them before they go into Court information one way or the other, either for or against? Can anyone doubt that the Justices who collected this information, and themselves acted upon it afterwards by giving their notices of objection, were influenced rather against the house whose accommodation was said to be indifferent as compared with the

house whose accommodation was described to be good? I am only giving this as an illustration, because, as I have said, it is *nihil ad rem* whether they were in fact influenced; but is not it calculated to influence and prejudice the mind of a judge who has to decide whether a house is a fit place to be licensed that it should be described to him beforehand as a place of indifferent accommodation, or might he not be influenced by the appearance and manner of the landlady whom he goes to interview beforehand? These are things which might influence a Justice of the Peace, and that is quite sufficient for the purpose. The case of Akkersdyk has been read to your Lordships, and I want to point out how I apply that. I submit it absolutely applies to this case. It is quite true there that the gentlemen who were objecting had in fact instructed a solicitor and counsel to represent them, but that is only evidence they were taking a part in the matter. That case is not decided on any principle that a Justice who instructs counsel is disqualified, but merely that the Justice who makes himself a party is disqualified, and the fact of his instructing counsel is merely evidence that he is making himself a party. The facts there were that these three gentlemen had investigated the case of that particular public house. It was true they were called a Committee of the County Council, but, as was pointed out by Lord Justice A. L. Smith, the hearing of the Council is the real application for the license, and the Committee merely enquired beforehand. Therefore, these three gentlemen in the case of Akkersdyk were in the same position as the members of the Committee, who went about making enquiries in this case. Then, on hearing of the application, it is found that they were parties to the opposition. In this case, how can it be said that these Justices are not parties to the opposition when under their own hands they have served a notice of opposition to these particular houses—served a notice of opposition and supported it by evidence and witnesses whom they have instructed their Clerk to bring there?

Mr. Low: That, my Lord, is denied. It is denied that that part of the instruction was carried out.

Mr. Horace Avory: Do you mean denied that the Clerk of the Justices was instructed to procure evidence?

The Lord Chief Justice: The second affidavit, is not it?

Mr. Low: No, the first affidavit; it is the end of paragraph 15. It refers to the resolution, or rather to the direction to the Clerk to get evidence, and then it says the resolution was never acted upon. "I say it is not the fact as suggested in paragraph 5 of the affidavit of Edgar Kempson and Jane Emma Smith that any instructions whatever were given to our Clerk. The said resolution was never acted upon."

Mr. Horace Avory: Any other instructions.

Mr. Low: The said resolution was never acted upon.

The Lord Chief Justice: The other instructions are about the notice.

Mr. Horace Avory: The affidavit on the other side said the Police Superintendent himself stated in Court that he had come there only on the instructions of the Clerk to the Justices.

The Lord Chief Justice: It is a perfectly right thing to tell the police. It is what Lord Coleridge pointed out they ought to do; and if the police had made a statement to them, they ought to call him into Court and take his evidence.

Mr. Horace Avory: But he was called into Court in this case to prove the affidavits which the Justices were relying upon, and which they had set out in their report—called for the purpose of substantiating the case which they had made in their report against the house. I must say a word about the particular Justice, Mr. Bentall.

The Lord Chief Justice: Upon that the point made against you is that he never adjudicated on anything. That may not be enough, but that is the point.

Mr. HORACE AVORY: I have seen his affidavit.

The LORD CHIEF JUSTICE: I beg your pardon. I only mentioned it because you happened to be out when Mr. Low went into that part of the case.

Mr. HORACE AVORY: I am much obliged to your Lordship. The cases are so numerous upon this that I think the Akkersdyk case, which I have just been looking at, is sufficient for me to cite, that if a Justice, disqualified by bias or interest, once sits, the mere fact that he does not ultimately take part in the decision makes no difference. That has been held expressly, and it arose for decision in that case of Akkersdyk, because that was one of the points taken. Sir Robert Finlay, who argued in support of the rules, said this: "There can be no question that the presence of an interested Justice, with the other members of the Court, at any judicial hearing, will vitiate the proceedings, notwithstanding the fact that the interested Justice does not take any part in the actual decision," and the same rule applies to the members of the County Council.

Mr. JUSTICE CHANNELL: There is no doubt about that, I think, as a general principle; but suppose that a gentleman retires as soon as ever he is objected to, and the parties go on, can you then raise an objection?

Mr. HORACE AVORY: That, I think, is a different question.

The LORD CHIEF JUSTICE: That is what happened here.

Mr. HORACE AVORY: No, my Lord; just the opposite with respect ——

The LORD CHIEF JUSTICE: I beg your pardon. With regard to Mr. Bentall (I am not speaking of the members of the Committee) there was this resolution—a very harmless one—passed at a meeting at which he had been present, and he has sworn that when you took the objection, he had never imagined that you were referring to that, but the moment it came to his knowledge that you were referring to that meeting, he immediately retired,

Mr. HORACE AVORY: I was answering the suggestion that the moment the objection was taken he retired. I say he did not retire.

Mr. JUSTICE CHANNELL: The objection taken to him personally.

Mr. HORACE AVORY: The objection was taken to any gentleman who had been present at the meeting of the Congregational Union.

The LORD CHIEF JUSTICE: Indeed it was not. It was an objection to a member of the Surrey Congregational Union.

Mr. HORACE AVORY: To any member.

The LORD CHIEF JUSTICE: He was not a member, you see.

Mr. HORACE AVORY: Yes, I thought so. He was a deacon of the church.

The LORD CHIEF JUSTICE: I do not want to discuss it with you; but I have looked at his affidavit very carefully.

Mr. JUSTICE CHANNELL: According to his explanation he was not.

The LORD CHIEF JUSTICE: I believe the gentleman is telling the truth, and he says it was never brought to his mind that he was the gentleman by the first statement, but as soon as you made that clear on the second day that you were referring to that meeting, he went away. That is what he says.

Mr. HORACE AVORY: I am sorry I cannot accept that.

The LORD CHIEF JUSTICE: No, no. I am only taking the affidavit.

Mr. HORACE AVORY: I had no idea that his affidavit had gone to that length. I did not so read it.

Mr. JUSTICE CHANNELL: It is fairly clear upon that affidavit, which I suppose is what you wanted to tell us, that you intended to object to him before, and it is quite clear that he does not deny that he knew of the objection, but he says the

objection was made in general terms, and he did not understand it applied to him, and the moment he understood it applied to him he went away.

The LORD CHIEF JUSTICE: Not only that he did not think it applied to him, but it was clear at first it would not include him, and it was not understood until afterwards that you put it so.

Mr. JUSTICE DARLING: You objected to the members of the Congregational Union, and he was not a member of the Congregational Union. It was a public meeting where other people were present, and he was present as a member of the public.

Mr. HORACE AVORY: In his own church.

Mr. JUSTICE DARLING: I do not know where it was.

Mr. HORACE AVORY: Yes, it was.

Mr. JUSTICE DARLING: But he would go to the church not because he was a member of the Congregational Union; he was a deacon of the church.

Mr. HORACE AVORY: I say the affidavit on which the rule was moved stated quite plainly that the objection was taken to any Justice of the Peace who had been present at the meeting to which allusion was made in the newspaper.

Mr. JUSTICE DARLING: Yes, and he says as soon as ever that objection was taken he went away.

Mr. HORACE AVORY: No; that is what I cannot understand.

The LORD CHIEF JUSTICE: We will see presently. You mean to tell them the fact that you objected to the gentleman, no doubt, but we must take this gentleman's statement as to what he understood.

Mr. HORACE AVORY: Will your Lordship take it with the affidavit on the other side?

Mr. LOW: It is just at the end of the affidavit. It is very clear in paragraph 13.

The LORD CHIEF JUSTICE: I follow it, Mr. Low. There is no reason to interpose every moment.

Mr. JUSTICE CHANNELL: Supposing the fact be so as a proposition, supposing that there is a Justice to whom objection might be taken, who does not in fact know that there is any objection to his sitting and does not understand about it and he begins to sit, then suddenly it is found out objection is made and he retires, and the parties then go on, surely it cannot be said that the proceeding is all invalid. What is the use of taking the objection if it is so? "I require you to retire," and he then retires and you go on; it is equivalent to waiving his having been there up to that time.

Mr. HORACE AVORY: No, because there is no waiver unless you know it. I was going to point out, that question only affects the question of waiver.

Mr. JUSTICE CHANNELL: There was a case a day or two ago in which, after the case had proceeded some distance, a juryman found out he was interested in it. He was immediately requested to go, and they proceeded with the eleven. If that case had proceeded to a verdict, would it have been bad?

Mr. HORACE AVORY: I think it might. It cannot make any difference when it is discovered. The question is, is there sitting upon the tribunal one Justice who is interested?

Mr. JUSTICE CHANNELL: If you consent to his sitting from the commencement, is not the request to retire and going on without him equivalent to a consent?

Mr. HORACE AVORY: But, my Lord, silence before you find out he is there is not a waiver. There is no waiver until you find out that he is there. If there is no waiver, his presence there vitiates the proceedings.

Mr. JUSTICE CHANNELL: Then when you do find out he is there, you say, "Please go," and he goes. Is not that equivalent to a request that he will go, and an intimation that if he goes you will go on with the rest?

Mr. HORACE AVORY: That may be. That is a mere question of evidence in the particular case. That may be a consent

when you go on with the case before the others; but supposing it is never found out.

The LORD CHIEF JUSTICE: I understand you perfectly.

Mr. HORACE AVORY: Supposing the man has been present there part of the time without any objection being made, and he happens to go away in the middle of the proceedings, and does not come back for some private reason of his own, can it be doubted that the proceedings would be vitiated by his having been there half the time.

Mr. JUSTICE CHANNELL: Yes, the cases all go to that. It is not disputed.

Mr. HORACE AVORY: That is what I meant. I must just say one word upon what I may call the preliminary objections which have been made to this mandamus.

The LORD CHIEF JUSTICE: About appeal?

Mr. HORACE AVORY: Yes.

The LORD CHIEF JUSTICE: We do not think they are a bar at all; it is only a question which would affect our discretion, if we thought there ought to be a mandamus on other grounds. We have told Mr. Stimson we do not think having given notice of appeal is any bar to your application.

Mr. HORACE AVORY: Do your Lordships understand why we gave notice of appeal? Because we want it to be plain. The only reason was, we had in our minds the possibility of this prejudicing this application, and we found the only means of keeping the house open was to give notice of appeal. There is no provision in the Licensing Act for getting permission of the Excise pending applications of this kind; you can only do it if you give notice of appeal, and it was given for that purpose alone, and not for the purpose of prosecuting the appeal. It was also suggested, and I apprehend that there is practically the same answer to it, that we had another remedy by prohibition or *certiorari*.

The LORD CHIEF JUSTICE: That is only form.

Mr. HORACE AVORY: I have said, and your Lordships ought to know, that we did formally apply for an adjournment in order to come here for a writ of prohibition. As soon as we had taken these objections, and they had overruled them, we asked for an adjournment, and the Justices refused. I am not going to say anything about the different points that arise in the different cases, because I prefer to put this on the broad ground which I have intimated, that under these circumstances all those Justices who made themselves parties to the notices of opposition were disqualified. I say not only on the ground that they made themselves parties to the notices of opposition, but also on the ground that these same Justices had taken evidence otherwise than on oath with regard to these various houses, and that at the hearing, when they were sitting and adjudicating, they were in fact accusers in the sense in which the word is used here; they were in fact supporting the opposition to the renewals, and that these renewals ought to have been granted—I say *prima facie* they ought to have been granted—and that there is no power for Justices to require all license holders in their district to come before them and sustain to their satisfaction a good case for a renewal. I submit that that is a most important proposition, and it will certainly revolutionise the practice before licensing justices if they can, by printing a form requiring everybody to attend on the ground that his house is not wanted, insist in effect upon every applicant making out affirmatively a case for a renewal of his license. I say that is quite contrary to the wording of Section 42, and that the Justices who identify themselves with the opposition disqualify themselves from adjudicating.

I am very sorry, but there are two cases in the "Justice of the Peace" which I meant to have cited. I will just give a reference to them; they are very short. One is The Queen *v.* Fraser, 57, "Justice of the Peace," p. 500.

The LORD CHIEF JUSTICE: What is the point of that?

Mr. HORACE AVORY: One of the Justices was a member of an association called the Nonconformist Council, and he had attended a meeting of the Council shortly before an application for a transfer, and at the meeting a solicitor was employed to oppose the application, but the Justice left the meeting before the solicitor was instructed, although he heard some allusion to the license being transferred at the meeting, and he was present at the hearing; and it was held that the decision must be set aside, as he was practically acting as prosecutor and judge. The other case is The Queen *v.* Ferguson, in 54, "Justice of the Peace," p. 101. One of the Justices, who was one of the Licensing Committee of the County, "but not one of the Licensing Justices of his division, wrote to three of the Justices saying that no license was required for that district. The Justices, however, granted the provisional license. A, being one of the confirming Justices, attended and voted against the confirmation." *Certiorari* was applied for, and it was held "that the rule must be made absolute to quash."

Mr. JUSTICE CHANNELL: That is, the writer of the letter attended, or the recipient?

Mr. HORACE AVORY: The man who had written the letter expressing his opinion beforehand that the license was not required.

Mr. JUSTICE CHANNELL: I understood that.

Mr. HORACE AVORY: I say the Justices here are in the same position; they have practically written letters, or expressed an opinion, that these licenses are not required.

JUDGMENT.

The Lord Chief Justice: There is no doubt that the points raised in this case are of very general importance. They have been most admirably argued before us on both sides, and, speaking for myself, I do not think I should gain anything by further considering the matter, and I am prepared to express the opinion at which I have arrived.

The rules were moved upon four grounds. First, a very important ground, that the Justices who are members of the tribunal cannot raise the objections contemplated by Section 42. Secondly, that if they do so, they must not adjudicate upon the cases in respect of which they have given notices. Thirdly, that in this particular case the Justices had obtained information upon which they acted contrary to the provisions of Section 42 of the Act. Lastly, a special objection to a Justice of the name of Bentall, on the ground that he had taken part in the proceedings, which would undoubtedly, it was said, invalidate his action or any judgment to which he was a party. The first and most important thing, I think, is to lay down certain general principles which are derived or can be deduced from the cases, and then consider what are the rights of the Justices and of the parties in regard to this matter, having regard to these general principles. I think it is quite clear that the Justices can only act upon sworn evidence given before them, and, if in any case it appeared to the Court that the Justices had acted upon information obtained otherwise than through the evidence, their proceedings would be set aside, and ought to be set aside. I think it is further equally clear, not so much from the decisions as from the legislation and the general principles applicable to the state of circumstances with which

the legislation is dealing, that it would not invalidate the proceedings if the Justices had become acquainted with what I may call the general circumstances of the case, and make use of that information to bring to the minds of persons who are before them the points that they have to deal with. There is only one other point which I wish to mention, because it seems to me an important one, and that is this: that if in any particular case a Justice has private information in regard to that particular case, he ought not, in my opinion, to sit upon that case, nor ought he to do anything except go into the box and give evidence; or, in other words, if a case ever arises of a Justice having particular knowledge in regard to a particular individual or against a particular individual, or with regard to a particular house, that knowledge can only be made available, or can only be utilised for the purpose of the case by means of his giving evidence as a witness, subject to cross-examination in the ordinary way. I mention these broad principles first because I think it right to make it clear that I bear them in view, when I express the opinion that I have formed as regards what the Justices did here.

I will state as briefly as I can, but sufficiently fully, what I really understand the Justices to have done in this case. A year before, the attention of the Farnham Bench had been called to the fact that there was a large number, or that there was considered to be, or might be, too large a number of licensed houses for the population in their district, and preparatory to the proceedings which give rise to this question, information was collected which, in my opinion, would be of value for the purpose of directing the minds of any tribunal that had to deal with it to the question or the incidents in regard to various houses, and which would be of importance when the matter came to be considered—information collected by the Committee—and the Magistrates have not shrunk from stating that they did before they sat go round and make them-

selves acquainted with what I may call, or would be called under other circumstances, the surrounding circumstances of each of these particular houses. I think it is going a great deal too far to say that applying their general knowledge of the district to the cases that they were going to sit upon, or applying the information so obtained, would invalidate the proceedings, provided that everything on which they wish to act, or intend to act, is brought to the minds of the persons against whom it can possibly be used. That being so, they take a course to which at present, subject to the legal objection that I have to deal with in a moment, I think no reasonable objection can be taken. That is to say, they think it right when they are dealing with the case of there being too many houses in the district, that the case of every house shall be investigated, and certainly the Justices in this case, if their affidavits are taken as representing the facts, and the contrary is not suggested, did investigate individually each case, and gave no decision until all the cases had been investigated. Therefore, that they intended to act upon the principle of fairly considering the requirements of the district, and the suitability of each particular house, I think nobody can question. In that state of circumstances, Mr. Avory's first objection arises, a very important objection, and one which possibly I should have taken time to consider if I did not think it was covered by authority, but upon which, personally, I have no real doubt. He says Justices cannot either give themselves, or cause any person to give on their behalf, the notice contemplated by Sub-section 2 and Section 42. Of course, he does not dispute that they can adjourn the case on objection being made, and that they can hear the case ultimately when the holder has been called to attend, without the previous prescribed notice having been given, but he says "on an objection being made" must mean made by somebody to the Justices, and not by the Justices themselves. That undoubtedly raises a very important point,

which was considered, as he properly told us, by Sir Henry Hawkins. There has, at any rate, for a long time been a view, whether judicially decided or not, that Justices could raise objections to licenses being renewed. That they ought to be able to do so, having regard to their functions and duties under the Licensing Acts, I, speaking for myself only, have no doubt at all. That there may be many cases in which the liquor traffic cannot be properly controlled unless Justices can raise such objections I think there is no doubt, but, as I have said, I do not found it upon general principles. I refer to the decisions or opinions as they have been expressed from time to time. In the year 1874, in The Queen *v.* Farquhar, Mr. Justice Blackburn said, "Assuming that the Justices might of their own knowledge make the objection themselves, and I do not say that it is not impossible that they might, yet it is clear that they ought not to have decided at once, because no notice had been given to the applicant, and he was entitled to be heard." It is obvious, whatever the actual language used, that Mr. Justice Blackburn thought that the Justices might be able to give a notice, and when it arose or was referred to in the case of The Queen *v.* Merthyr Tydvil, Mr. Justice Stephen put the construction upon The Queen and Farquhar which I have referred to, and he said: "The case of The Queen and Farquhar would seem to show that the objection made to the proviso may be made by the Justices themselves"; and in the third case which was mentioned by Mr. Low, I think it is The Queen and Eales, in 44 "Justice of the Peace," Chief Justice Cockburn took the same view. Therefore, there was during a series of years a considerable amount of opinion (I agree no actual decision) to the effect that the Justices could raise the objections. When the matter came before Sir Henry Hawkins in the Anglesey case (which is reported in 65 "Law Journal") he certainly did use expressions which amply supported Mr. Avory in urging before us that his opinion was that the objection must be raised

by a third person. He used the expression, "The language of the proviso 'on an objection being made' can only mean made to the Justices." Of course, that does not cover the case of an individual Justice making an objection, and then ceasing, so to speak, to act as a Justice. But I think it only fair to say that the argument of Mr. Avory was well founded in this, that Sir Henry Hawkins's opinion certainly did seem to come to this, that the Justices could not raise an objection.

Then came the last case, which is the case of Baxter *v.* Leche, reported in 79 "Law Times," in which there is an express decision of my brother Wills and my brother Kennedy, to the effect that the Justices may raise the objection, and having raised it, may adjourn and give notice. It would be perfectly true to say that in that case the Justices did not give the grounds on which they were going to entertain the objection, but certainly it seems to me to be very very much fairer to those whose licenses are going to be questioned that they should be told what objections are going to be raised rather than that they should not. Therefore that particular argument seems to me not to affect the weight of that authority in which I entirely concur, and which I will point out is binding upon this Court.

Then there is, I agree, only a matter of opinion, but it seems to me an opinion which contains very weighty reasoning indeed, and that is the reasoning of Lord Justice Fry, and it is all the more weighty because of the strong line which Lord Justice Fry had taken in the case of Leeson and the General Medical Council, and Allinson and the General Medical Council—in the case cited from the "Justice of the Peace," where he was only giving his opinion, after consideration as the Chairman of the Quarter Sessions. Therefore, I come to the conclusion that Justices can give these notices or raise these objections rather under Section 42, and that it does not invalidate the proceedings that a notice has been subsequently given by them. Now then, says Mr. Avory, that being so, even then they must not sit and

act. That seems to me to raise the really fundamental question, what is the position of a person who objects? Certainly if we take the language of Lord Herschell in Boulter's case in the sense which would be naturally gathered from his expression, the objector is not in the position of a party, and it seems to me that looking to the duty which the magistrates have to perform, and the considerations that ought to affect them, it is not right to regard a person who objects on the grounds which have been raised in this objection as what I may call a personal opponent of the person whose license is in question, or a party to any litigation. It is in that respect that I think that assuming the Justices have acted without any suggestion of improper bias or without any suggestion of having acted on improper materials, the fact that they have given notice does not bar them from subsequently acting upon the proceedings. In other words, I answer now the question which I left open in the Richmond case, where I merely indicated my opinion that the question would have to be decided some time as to whether or not the Justices could give the decision. Certainly in a case in which the real question is that the Justices, being of opinion that there are too many houses in the district, and the matter to be considered is how those houses are to be reduced, it would be very unfortunate if the mere fact that notices are given in order that that question may be fairly and impartially considered should prevent those gentlemen from acting. Mr. Avory has said that if they have prejudged the question from the point of view of having previously made up their mind that there ought to be a reduction of licenses, their judgment would be affected. I am not prepared to agree with that argument, and I am not prepared to dissent from it—it certainly is not this case. But when you see that the Justices have approached the question of whether there should be any reduction, and if so, what, by raising the question with regard to every license in the district it seems to me to be an

entirely different consideration altogether. I will just say one word or two upon what I will call the third objection, and that is that they have acted upon information obtained beforehand, and not given in evidence. I asked to see the notes in the only case which has really been argued in detail before us, and which is agreed is typical of the whole, and I find that all the points on which the objections to the house could be founded were proved in evidence in the case of, I think it is called, the Queen's Head—Mrs. Smith's place. All the magistrates have said, and I will only say this about these magistrates, knowing some of them and who they are, that they are certainly not gentlemen who would not bring judicial minds to bear upon their duties. They have all said that every substantive matter was proved in evidence, and that they have not acted in any single case except upon the evidence. I think, if I remember aright, I am quoting it from memory, one of the magistrates says they heard each case separately, notes were taken separately, and in each case, or in each case in which it was necessary, the notes of the evidence were read over to them before they came to their decision. Therefore it seems to me impossible to say in fact that there is any foundation on which we ought to come to the conclusion that the magistrates acted in coming to their decision upon information which they obtained elsewhere. It must be distinctly understood that I express my opinion without any hesitation that if they had so acted they would not be entitled to use any information or act upon anything which was not evidence given on oath before them.

Lastly, there is the objection that is taken with regard to Mr. Bentall, and I think that ought to be stated so that the facts may be understood. The affidavit on which the rule was moved had stated a resolution in the chapel—"That this meeting of the Surrey Congregational Union Southern Districts note with satisfaction the efforts of the Farnham Magistrates to reduce the

number of licensed houses in this ancient town, which are in excess as to number of population with most other towns in Surrey." I agree with Mr. Low, it seems to be a very harmless resolution, and one which would not indicate bias in itself. But it is said in the same affidavit that a formal objection was taken to any Justices sitting who had attended the meeting of the Surrey Congregational Union on the 5th of March, 1902. Mr. Bentall says in his affidavit that he was not a member of the Congregational Union, that this being a public meeting and the resolution not having what I may call any direct reference to any particular action or any particular house, when the objection was first taken by Mr. Avory it did not come to his mind that it applied to him. But upon the second day, when Mr. Avory expanded this particular objection, he understood it, and he at once got up and retired, and took no further part in the proceedings. Then the applicants for the renewals go on. It seems to me it would be going far beyond any case that has ever been decided to hold that in the case where the magistrate retires, and the parties go on with the case, that they can raise the objection; but I entirely agree with what Mr. Avory put, that if this had not been known, if no objection had been taken, but it had afterwards been discovered that a magistrate who had taken an active part or a part in what I may call promoting a particular side had sat, the fact that he had so sat would or might have vitiated the proceedings even if it had not been known to the persons making it. With regard to the authorities that Mr. Avory referred to, the London County Council case, and those two last cases of Fraser and Fergusson, they are all in my opinion illustrations of the principle that if a person has taken sides in the matter in which he is called upon or purports to act judicially he cannot be allowed to act. In my opinion they do not assist Mr. Avory in the view I have taken of the facts.

I have therefore come to the conclusion that none of the four grounds on which these rules were moved prevail, and that the application for a rule nisi should be discharged.

Mr. Justice Darling: I am of the same opinion. In regard to the point that the Magistrates had made up their minds to reduce these licenses, because they had come to the conclusion, with many other people in the neighbourhood, that there were too many public houses within their district; I cannot see that there is any objection whatever in that. They must have had some opinion in the matter. They must have had one of three opinions. They must have thought that there was exactly the right number of houses, in which case, if anybody asked for a new license it might be said, "You are biassed against that, because you think there are already the right number"; they must have thought there were too many, or they must have thought there were too few. In either case it might be said, if it is proposed to renew a license or to grant a new license, then, because you have got an opinion on the matter that there are just enough, that there are too many, or that there are too few, you have made up your mind, and you cannot consider the question. To my mind the Legislature has confided this licensing to the Magistrates because they are people in a position to bring to bear upon the question of granting licenses their experience of the neighbourhood and of the necessities of the neighbourhood. Of course they are not to decide, if evidence is brought before them, regardless of the evidence—not at all; but when it is provided that licenses should be renewed, as I say, they must come to the Licensing Committee with some sort of opinion upon the question such as I have indicated. Coming there with the opinion which they held, that there are really too many licensed houses in this neighbourhood, and that it would be a good thing if there were fewer, and contemplating, as they must, that if a person asks for a renewal of a license it may very well be that they will grant it, or it may very well be that they

will refuse it, it is said that they cannot exercise any kind of judgment on the matter unless somebody—it might be a person knowing nothing in the world about it—gets up or comes before them and says, "I object." The sort of person who gets up and does that is very easily obtained if he is wanted, and I could indicate a place where there is a superfluity of them, if required. It is perfectly clear, I think, that the Magistrates at Licensing Sessions have a discretion. If I wanted any kind of authority for that—it is to be found in many places—I should take it from no place more readily than from what was said by Sir Edward Fry quite lately at the Long Ashton Licensing Sessions for the County of Somerset, where he said, "The duty vested in Licensing Justices is a discretionary one," and then he went on to say it had been objected that the discretion was contingent upon an objection taken by a third person, and that the Justices could not take an objection for the purpose of giving themselves an opportunity of exercising that discretion. He said, "It seems an unreasonable construction of Section 42 of the Licensing Act to suppose that Magistrates were absolutely deprived of any opportunity of exercising a discretion unless some third person gave them that opportunity. He thought they might take an objection for the purpose of giving themselves that opportunity, and by so doing they did not express any conclusion or any bias beyond thinking it a question that ought to be enquired into." This was as to what the Justices did in the particular case which he was dealing with then. That, I think, states the law accurately, better than I can state it myself, and for that reason I desire to obtain those words. It carries to my mind the other point that the Justices who take an objection may sit and hear the application for the license because that is what happened in that case—that is how it was the question arose. When the Magistrates came to hear applications for licenses, they were objected to on the ground that the objectors were the Justices who were trying the case, and Sir Edward Fry having said that,

the Magistrates went on to hear the applications for licenses. Therefore, to my mind, it is really not necessary to argue any more upon that point; in fact, the two points are only one, because there is nothing in the point that the Magistrates may not object unless it is coupled with this, "and proceed to hear the application for the license," because you could not sustain the proposition that the Magistrates may not object. It would not be a good answer to say you cannot object because you are a Magistrate. He would say, Magistrate or not, I am not objecting because I am a Magistrate, I am not going to hear the objection, I am not going to sit, I come into Court and I object. Therefore it is one point and not two: Can a Magistrate formally object for the purpose of allowing himself to exercise his discretion, and then proceed to hear the application for a license and exercise his discretion? I think what I have read is enough to show that he can, but it follows upon a great deal of authority—it follows upon the distinct authority of Baxter *v.* Leche, which has decided this point, and for Baxter *v.* Leche there is authority which has been alluded to by my Lord in the various cases that he has mentioned. The only thing that I know of to the contrary effect is the judgment of Mr. Justice Hawkins in The Queen against The Anglesey Justices. That cannot, to my mind, be reconciled with these other cases. It was not a judgment of the Divisional Court, it was only a considered judgment of a single Judge, and therefore I am at liberty to say what I think about it, which is, that it was wrong.

Mr. Justice Channell: I entirely agree. At this time I do not desire to add much to what my brethren have said. There are one or two things I might perhaps have said if there had been a little more time. I think the difficulty here arises almost entirely from the fact that the Licensing Justices have both administrative functions and judicial functions, and that as so often happens in cases where gentlemen are put into that position, it is extremely difficult to divide exactly what are their

judicial functions from those which are their administrative functions. I think that the Licensing Justices are clearly entitled to go in their own way to make themselves acquainted with the character of their district, with the amount of public-house accommodation that there is existing in it, and all matters of that sort. A large number of the Justices, local gentlemen, would probably have the information. New gentlemen who come into the district are fully entitled to enquire, and not judicially to enquire, into the general circumstances to fit them for performing their licensing duties, to give them a knowledge of the place, the wants of it, and whether the public-house accommodation is too much or too little, and things of that sort. When it gets to the question of the rights of individuals (I may call them rights, *quasi* rights) about renewals—whether a particular individual should or should not have his license renewed, then it is a different matter—it becomes a judicial matter. In that matter it seems to me they must act judicially. It is at any rate *quasi* judicial, and they must not act upon things acquired behind the backs of the parties without giving the parties the fullest information to understand what it is they are acting upon without giving them an opportunity of enquiring about it, and seeing whether they agree with it, or what answer they have got to make, or what they say about those facts. There is nothing to my mind, therefore, objectionable in the general character of the enquiries which these magistrates made for the purpose of ascertaining whether or not the suggestions made to them by the other magistrates in the county that in their district there were a great deal too many public-houses were correct. The way in which they entered into that enquiry shows what a full and careful report it must have been. In the

course of that report incidentally the people who made it furnished information not merely upon the general question, upon which I think the enquiry was not a judicial one, but they also furnished information which would be useful when they came to the judicial enquiry, and it became a matter of considerable difficulty how that information so acquired could be properly used. So long as it was only supplied to the magistrates for the purpose of their not acting upon it, but using it to make enquiries when the different cases of these people came on, I think it was unobjectionable. It is a little doubtful, no doubt, and a little dangerous, because it was so very likely to be misused; but in this case, so far as I see, it really was used merely for the purpose of making full enquiries into each of the cases when they came on, and deciding each of those cases judicially and according to the evidence before the Court. That disposes of a certain portion of the objections to these proceedings.

There remains only the question about the right of the Justices themselves to be the objecting parties, and their right, if they were the objecting parties, to sit. I think the difficulty upon that point arises partly from the different view that Mr. Avory apparently takes, and which one or two questions that I asked him in the course of the argument showed that he does take, as to what an objection means in this section. I take the view that I intended to have said something about more fully which has, I think, been put quite clearly by my brother Darling, in what he has said in reference to Sir Edward Fry's opinion of the matter, and I do not think I can improve upon that. Substantially it is that the objection is taken not to making themselves parties to an opposition in the sense that

they are opposing parties to the gentleman who is requiring his license, but simply in the nature of a notice that they propose to exercise their discretion in that matter, and that it is done for the purpose of enabling them so to exercise that discretion. Those, I think, are the substantial points in this case, and I do not think it is necessary to add anything to the matter.

Mr. Low: The rules will be discharged with costs.

The Lord Chief Justice: Yes.

Mr. Horace Avory: There will be only one set of costs, I suppose.

The Lord Chief Justice: Yes, only one set of costs.

Mr. Horace Avory: If your Lordship pleases.

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